FILE COPY

PETITION NOT PRINTED

FILED
JAN 8 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1958.
No. 575

MEMORIAL NATIONAL HOME FOUNDATION, a non-profit charitable corporation,

Petitioner,

vs.

EDMUND G. BROWN, Attorney General of the State of California, and AMERICAN GOLD STAR MOTHERS, INC., a non-profit charitable corporation,

Respondents.

Brief for Respondent Edmund G. Brown in Opposition to the Petition for Writ of Certiorari.

STANLEY MOSK,
Attorney General,
By GEORGE M. GOFFIN,
Deputy Attorney General,
600 State Building,
Los Angeles 12, California,
Attorneys for Respondent.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

PETITION NOT PRINTED

SUBJECT INDEX

PAGE

Opinions below 1

Questions presented 2

Statement of the case 2

Argument 9

I.

The California Attorney General has properly brought and maintained this litigation 9

II.

The California courts did not change the beneficiaries of the charitable trust to which the property known as Truman Boyd Manor was transferred but, in fact, saved the trust for the purposes for which it was instituted 11

A. The California courts did not hold that the property was to be used for the membership of a "certain private corporation" 11

B. The overwhelming evidence elicited at the trial shows that the representatives of the United States Government believed that Memorial National Home Foundation existed under the auspices and as a subsidiary of American Gold Star Mothers, Inc. 11

III.

A deed from the United States of America has not been collaterally attacked in this litigation 13

IV.

The United States is not an indispensable party to this litigation 14

V.

There is no federal question involved in this case 16

Conclusion 17

Appendix:

Exhibit 1. Findings of Fact and Conclusions of Law ..... App. p. 1

Exhibit 2. Interlocutory Judgment ..... App. p. 12

Exhibit 2. Opinion of the District Court of Appeal ..... App. p. 17

TABLE OF AUTHORITIES CITED

CASES

	PAGE
Baptist Association v. Hart's Executors, 17 U. S. (4 Wheat.) 1, 4 L. Ed. 499	15
Late Corporation of Latter-Day Saints v. United States, 136 U. S. 1, 10 S. Ct. 792, 34 L. Ed. 478	15
Los Angeles County Pioneer Society, In re, 40 Cal. 2d 852, 257 P. 2d 1	10
Mount Vernon Mortgage Corporation v. United States, 236 F. 2d 724	16
People v. Cogswell, 113 Cal. 129, 45 Pac. 270	9
United States v. Ahtanum Irrigation District, 236 F. 2d 321	16
United States v. Minnesota, 270 U. S. 181, 46 S. Ct. 298, 70 L. Ed. 539	15

TEXTBOOKS

4 Scott on Trusts (2d Ed.), pp. 2554-2555	10
4 Scott on Trusts, Sec. 391, p. 2753	9

IN THE

Supreme Court of the United States

October Term, 1958.
No. 575

MEMORIAL NATIONAL HOME FOUNDATION, a non-profit charitable corporation,

Petitioner,

vs.

EDMUND G. BROWN, Attorney General of the State of California, and AMERICAN GOLD STAR MOTHERS, INC., a non-profit charitable corporation,

Respondents.

Brief for Respondent Edmund G. Brown in Opposition to the Petition for Writ of Certiorari.

Opinions Below.

The opinions in this case are reported at 158 Cal. App. 2d 448, at 162 A. C. A. 550 and at 162 A. C. A. 55. The opinion on the merits is found in 162 A. C. A. 550 and is included herein as Exhibit 3. The other two opinions may be found in the Petition listed as Exhibit "C" and Exhibit "E."

Also included within this brief are the Findings of Fact and Conclusions of Law [Ex. 1] and the Interlocutory Judgment [Ex. 2] of the Superior Court in Los Angeles.

Questions Presented.

Petitioner has raised various questions in its petition. They can legitimately be restated and included within the questions herein presented.

This respondent asserts that the questions presented in this case are substantially as follows:

1. Whether or not the California courts have changed the beneficiaries of a charitable trust.

2. Whether or not a deed from the United States of America has been collaterally attacked in this case.

3. Whether or not the United States is an indispensable party to this litigation.

4. Whether a substantial federal question is involved in this litigation.

Statement of the Case.

It is evident, from reading the Petition for Writ of Certiorari, that the character of this proceeding and the effect of the decisions rendered herein need to be clarified. Therefore, this respondent will set forth the facts which he feels must of necessity be brought to the attention of this Honorable Court.

Simply stated, this was an action brought by the Attorney General of the State of California for the purpose of enforcing a charitable trust and which had as its ultimate result the removal of a charitable trustee for cause and the proposed appointment of a successor trustee. The evidence elicited at the trial points out the below listed facts to be true. This respondent brings to the attention of this Honorable Court only those facts which bear upon the issues presented by the petitioner herein and its Petition for Writ of Certiorari. The opinion of the California District Court of Appeal (162 A. C. A.

550), attached hereto and marked Exhibit 3, should present to this Honorable Court sufficient facts whereby it can ascertain the remaining issues that were involved in this action and their disposition.

American Gold Star Mothers, Inc., is a charitable corporation organized in the District of Columbia for public, charitable, loyal and patriotic purposes. The petitioner, Memorial National Home Foundation, is a California nonprofit corporation organized for charitable purposes. Said petitioner was organized as a subsidiary and under the auspices of American Gold Star Mothers, Inc. [Rep. Tr. pp. 183-185, 1410-1411, 2832-2833, 2836-2837, 2981, 3253, 3600-3601, 3591, 3361.]

Mrs. Eleanor D. Boyd was president of American Gold Star Mothers, Inc., from June, 1946 through June, 1947, and from June, 1948 through June, 1952. [Rep. Tr. pp. 161-163, 245-246, 167, 247-248.] Mrs. Boyd formed Memorial National Home Foundation, as stated, under the auspices of American Gold Star Mothers, Inc. and became president and chairman of the board of the Foundation. [Rep. Tr. pp. 183-185.]

The following quotation from the opinion of the California District Court of Appeal regarding the evidence elicited concerning the transfer of Truman Boyd Manor to Memorial National Home Foundation from the United States states the pertinent facts that should be taken into consideration by this Honorable Court regarding the acquisition of Truman Boyd Manor from the United States, which is the sole transaction under consideration by this Honorable Court raised by the Petition for Writ of Certiorari:

> "During World War II the United States Government had established at Long Beach a temporary

project for defense workers and armed forces personnel consisting of about 90 acres of land with some 1,000 family dwelling units on it. It had been named Truman Boyd Manor in honor of Mrs. Boyd's son who had been killed in the service. As early as August, 1947, Mrs. Boyd began a campaign to induce the government to relinquish this project to Foundation as a home for Gold Star Mothers, under the authority of the Lanham Act (42 U.S.C.A. §1581(b)). In these activities she contacted senators, representatives, Public Housing Administration officials and others having authority concerning the subject. She now claims to have acted solely as president of Foundation, but the record she made at the time refutes this contention. She told various senators that 'Memorial National Home Foundation is incorporated to take care of the needy members of the American Gold Star Mothers, Inc., as well as other needy Gold Star Mothers and fathers.

"'The American Gold Star Mothers, Inc. is a National organization qualified in the District of Columbia after World War I. The Memorial National Home Foundation was incorporated to take care of the needy Gold Star Mothers and Fathers on a National scale.' Congressman Doyle of Long Beach was quoted in one of the letters in evidence as stating that 'he participated with Mrs. Boyd in the Congressional and Navy Department discussions at the time the enabling legislation was passed, and that it was assumed on all sides that this was a charitable project of the American Gold Star Mothers, Inc.' There was much correspondence with government officials most of which was upon the letterhead of Gold Star and signed by Mrs. Boyd as president of that organization and chairman of the board of Foundation. She introduced herself and was introduced to

various officials as president of Gold Star. Finally, in 1950 an amendment was incorporated in the Lanham Act which was intended and understood to apply to Gold Star, viz.: '[W]here the Administrator determines that the housing involved is urgently needed by parents of persons who served in the armed forces during World War II and died of service-connected illness or injury."[5]

[5]This was the language of the statute at the time of relinquishment to Foundation was approved on June 7, 1950, "for the purposes of acquiring and operating a Home for the parents of persons who served in the Armed Forces during World War II and who died of service connected illness or injury."

By amendment of October 26, 1951, the words "during World War II" were stricken and the following phrase was substituted, "at any time on or after September 16, 1940, and prior to July 26, 1947, or on or after June 27, 1950, and prior to such date thereafter as shall be determined by the President." (65 Stat. 648, ch. 577 §2.)

"When formal application for relinquishment was made it was presented in the name of Foundation. However, it included a copy of a resolution adopted at the Gold Star Convention of 1949, reading: 'RESOLVED that the American Gold Star Mothers, Inc. authorize the Chairman of Memorial National Home Foundation to proceed to acquire the emergency Housing Project . . . that project being ninety (90) acres, which assures us of plenty of room to take care of the mothers and fathers who need assistance; to be known as the Memorial National Home Foundation property for Gold Star mothers and fathers throughout the nation."[6] Also included was a financial statement

[6]The corporate name of Gold Star did not include "Inc." until the amendment of November, 1950. It is a fair inference that the phrase "Gold Star Mothers" had a generally accepted secondary meaning which signified respondent corporation and its members.

of Gold Star written upon its own letterhead. This application caused surprise and questioning within the Housing Administration (which had jurisdiction over this matter) and it required that a relinquishment of the property to Foundation be approved in writing by Gold Star. When this was received, and the executive board of Gold Star had appeared in support of the application, same was approved, for the Housing Administration then concluded that 'Memorial National Home Foundation was a corporation that had been established to take title to the property as an operating organization for' American Gold Star Mothers, Inc. The court found, upon adequate evidence, 'that the Housing and Home Finance Agency, Public Housing Administration, did believe that the said Truman Boyd Manor was being conveyed to an organization which was an integral part of and controlled by the defendant, American Gold Star Mothers, Inc.' Before the matter could be accomplished the Korean conflict arose and a freeze was placed on all such relinquishments.

"Early in 1953 the subject of lifting the freeze on this property was considered and the question again arose whether Foundation would be a proper grantee. Mrs. Boyd then furnished the authorities a copy of a resolution adopted at the Gold Star Convention of 1952, to the effect 'that the National Executive Board of the American Gold Star Mothers, Inc., uphold and recommend the continuance of the policy of the Memorial National Home Foundation, also, that in accord therewith each chapter shall proceed to annually elect a member to the advisory committee of the Memorial National Home Foundation. . . .

Careful scrutiny of this resolution shows that it related only to the policy of the Foundation to have members of Gold Star upon its advisory committee. But the resolution satisfied the government officials, the freeze was lifted and the property deeded to Foundation on May 29, 1953, for a price of $138,401.63[7] with a down payment of $944.66. The entire balance was paid in the ensuing year out of current revenues from the property, which grosses approximately $500,000 a year. An appraisal made for Foundation showed a value of $2,698,143.15.

[7]This represented the cost of the land to the Government of $133,182.49, plus a payment in lieu of taxes of $4,277.48, and the sum of $944.66 for accounts receivable.

"An action was brought in June, 1952, by Foundation against Gold Star to establish its right to all the trust property. It was later voluntarily dismissed and was followed by another similar action filed on July 31, 1953, which was likewise dismissed.

"The deed to the government property having been received in May, 1953, Mrs. Boyd in that same month openly repudiated any trust for the benefit of members of Gold Star. This she did through a news release given to the Long Beach Independent. It said, in part: 'Memorial National Home Foundation was incorporated in July, 1947, while Mrs. Boyd was National President of Gold Star Mothers. It has no connection with that organization, however, except that Gold Star Mothers have been invited to name an advisory board.' No convention of Gold Star members had been told that these corporations were independent. Mrs. Singer, who was president of Gold Star at the time of trial, testified that she always believed that control and ownership of Foundation

was in Gold Star; also that Mrs. Boyd always said at chapter meetings 'this is yours. It is for American Gold Star Mothers.' Mrs. Broom, who was first vice president of Gold Star during all the years of Mrs. Boyd's incumbency as president, never learned of the amendments to the charter of Foundation until 1953. Mrs. Boyd testified at the trial that she did not feel that Gold Star was the parent organization of Foundation.

"Shortly after the press release the 1953 Convention of Gold Star was held in June, and a resolution was there adopted 'that the National Executive Board of American Gold Star Mothers, Inc., be, and it is hereby authorized and directed, in order to protect the interests of the members and Chapters of American Gold Star Mothers, Inc., to take all action and to do all things as said National Executive Board shall, in its sole discretion, deem necessary and proper, for bringing about a change in the control, management and operation of Memorial National Home Foundation so as to place the said control, management and operation of such Foundation in the duly authorized representatives of American Gold Star Mothers, Inc. . . .'"

On June 9, 1954, the California Attorney General filed his Complaint to Declare and Enforce Charitable Trust. [Clk. Tr. p. 1.] This action was brought by this respondent under his common law powers over charitable trusts.

ARGUMENT.

I.

The California Attorney General Has Properly Brought and Maintained This Litigation.

At common law, the Attorney General was granted powers and duties in regard to charitable trusts. In fact, the record shows that even before the enactment of the statute of Charitable Uses in the year 1601, suits were brought and maintained by the Attorney General to enforce charitable trusts. It has been correctly stated that the community has an interest in the enforcement of charitable trusts in seeing to it that these trusts are properly performed and correctly administered by the trustees. And from the days of the old English common law, the Attorney General was the party designated to protect and represent the community interest referred to above. (See discussion in Scott on Trusts, Vol. IV, Sec. 391, p. 2753.)

The California case of *People v. Cogswell*, 113 Cal. 129, 45 Pac. 270, minutely traced the history of the Attorney General's power of maintaining suits in California back to the common law as established in England and transferred to the legal heritage of this country. *People v. Cogswell* (*supra*), stated at page 136:

> ". . . . It is not only the right but the duty of the Attorney General to prosecute such an action. The state, as ***parens patriae***, superintends the management of all public charities or trusts, and, in these matters, acts through her attorney general. Generally speaking, such an action will not be entertained at

all unless the attorney general is a party to it. Such was the rule at common law, and it has not been changed in this state. Even in those states, such as Massachusetts, where, by a special statute, the attorney general is instructed to prosecute such actions, it is declared that the statute does not narrow or diminish in this regard the common-law powers incident to the office. . . ."

In California, non-profit corporations organized for charitable purposes, such as petitioner, Memorial National Home Foundation, are legally deemed to be trustees.

In re Los Angeles County Pioneer Society, 40 Cal. 2d 852, 257 P. 2d 1;

Scott on Trusts (2d Ed.), Vol. IV, pp. 2554-2555.

As a charitable trustee, it is axiomatic in the law that these corporations may be removed for defalcations, mismanagement and other abuses of trust. Therefore, the Attorney General instituted this litigation, the courts have found that the abuses are present, and the petitioner, Memorial National Home Foundation, was consequently removed as trustee of the property in its possession. [See the Findings of Fact and Conclusions of Law and the Interlocutory Judgment and the Decision of the District Court of Appeal of the State of California, Exs. 1, 2 and 3.]

II.

The California Courts Did Not Change the Beneficiaries of the Charitable Trust to Which the Property Known as Truman Boyd Manor Was Transferred but, in Fact, Saved the Trust for the Purposes for Which It Was Instituted.

A. The California Courts Did Not Hold That the Property Was to Be Used for the Membership of a "Certain Private Corporation."

Petitioner makes the following assertion in his Petition for Writ of Certiorari on page 10:

> ". . . The California courts have now held in effect that only such parents as are members of American Gold Star Mothers, Inc., a private corporation, may use said project."

The assertion that American Gold Star Mothers, Inc., is a private corporation is incredible. American Gold Star Mothers, Inc., is no more or less of a public corporation than is the petitioner, Memorial National Home Foundation. American Gold Star Mothers, Inc. is a duly organized Delaware corporation existing under the laws of the State of Delaware and is existing for purposes which are charitable and patriotic.

B. The Overwhelming Evidence Elicited at the Trial Shows That the Representatives of the United States Government Believed That Memorial National Home Foundation Existed Under the Auspices and as a Subsidiary of American Gold Star Mothers, Inc.

Petitioner asserts a claim that Memorial National Home Foundation was the sole entity to which the United States Government transferred Truman Boyd Manor in trust for the purpose of benefiting qualified parents other than

those belonging to American Gold Star Mothers, Inc. By so arguing, petitioner ignores the overwhelming weight of evidence to the contrary.

The evidence reveals that the Public Housing Administrator was responsible for the transfer of Truman Boyd Manor. Among the officials whose approval was required were Herman Fliege and Abner Silverman. [Rep. Tr. pp. 2700-2713.] Silverman testified in part:

> "When the legislation was being considered, it was my understanding that it was being sponsored or that it was requested by American Gold Star Mothers." [Rep. Tr. p. 2781.]

Fliege testified that he was advised by Mr. Boyd in 1950 that "the American Gold Star Mothers, Inc. were meeting in convention in a short time, she was the president of that organization, and was anxious to have this accomplished before her term of office expired." [Rep. Tr. p. 2681.] It is clear from the transcript that Mrs. Boyd was referring to the relinquishment of Truman Boyd Manor.

The enabling legislation allowing the transfer of Truman Boyd Manor was referred out of the Senate's Banking and Currency Committee. Mrs. Boyd wrote to each Senator on the committee, requesting an amendment to the Lanham Act. Each letter was sent on the stationery of American Gold Star Mothers, Inc., by Mrs. Boyd, who signed the letters as National President and also as Chairman of the Board of Memorial National Home Foundation. [Rep. Tr. pp. 703-705.]

The Public Housing Administration required the endorsement of American Gold Star Mothers, Inc., to the transfer. [Rep. Tr. pp. 2367-2368.] The statement filed

by Mrs. Boyd with its supporting documents on American Gold Star Mothers, Inc. letterhead, in connection with the release of Truman Boyd Manor, could only have caused the officials of the Public Housing Administration to conclude that the Foundation was a corporation that had been established to take title as an operating agency of American Gold Star Mothers, Inc., and the agency did so conclude. [Rep. Tr. pp. 2673-2674.] The final arbiter, Commissioner Eagan of the Public Housing Administration, prior to giving his approval, wanted staff assurance that the relinquishee, Memorial National Home Foundation, was endorsed by American Gold Star Mothers, Inc. [Rep. Tr. p. 2777.]

This evidence is completely at variance with the contentions made by petitioner herein.

All of the evidence concerning this point was discussed at length by the District Court of Appeal of California. Any additions to this discussion would be superfluous on the part of this respondent. Suffice it to say that this respondent, contrary to the contention of petitioner, has actually salvaged the trust property for the benefit of the true beneficiaries of the established trust.

III.

A Deed From the United States of America Has Not Been Collaterally Attacked in This Litigation.

Petitioner has asserted that, by its being divested of title and possession to the property herein in question, the California courts have wrongfully upheld a collateral attack on a deed executed by the United States. This respondent contends that the issue of collateral attack on a United States deed is not even vaguely involved.

It should be patent, from the opinion of the District Court of Appeal and from all other documents on file

in this action, that this litigation does not concern itself in any manner with an attempt to invalidate the deed from the Federal government to Memorial National Home Foundation. This respondent recognizes the validity of this deed.

This respondent recognizes that the United States transferred the property, known as Truman Boyd Manor, in trust to Memorial National Home Foundation by quitclaim deed. Subsequent to this transaction, the Attorney General has filed this litigation seeking to enforce the charitable trust imposed upon said property and to safeguard it for the beneficiaries involved. As was pointed out in Paragraph I above, the Attorney General is merely suing in equity to enforce a charitable trust. This respondent is not concerned in any manner with the transaction between the Federal government and Memorial National Home Foundation. This respondent is only interested in removing all of the property from the possession of Memorial National Home Foundation due to its defalcations.

The cases cited by petitioner have only to do with the attack of a party upon a federal deed or patent. As pointed out above, these cases are inapplicable to the case at bar.

IV.

The United States Is Not an Indispensable Party to This Litigation.

Petitioner has wildly asserted, in its attempt to join the United States as a party to this action, that the Attorney General of the United States is the only party charged with the duty of enforcing charitable trusts and that the State Attorney General has no interest in this

litigation. Such a contention should be summarily treated. The State Attorney General is the only party charged with the duty of enforcing charitable trusts. (See Par. I, *supra.*)

Petitioner now contends that the United States Attorney General is the party involved in this particular charitable trust. As support for this contention, petitioner cites five cases. A cursory reading of each one of these cases will show that they do not stand for the proposition asserted by the petitioner.

Petitioner cites the case of *United States v. Minnesota*, 270 U. S. 181, 46 S. Ct. 298, 70 L. Ed. 539 (1925). This case is strictly limited to the right of the United States Attorney General to appear as *parens patriae* in a suit on behalf of Indians.

Petitioner cites the case of *Late Corporation of Latter-Day-Saints v. United States*, 136 U. S. 1, 10 S. Ct. 792, 34 L. Ed. 478 (1889). This respondent grants the fact that the United States Attorney General appeared in this charitable trust case. However, it should be pointed out that in 1889 Utah was still a territory. It would be hardly possible for the State Attorney General of Utah to appear in 1889.

The petitioner cites the case of *Baptist Association v. Hart's Executors*, 17 U. S. (4 Wheat.) 1, 4 L. Ed. 499 (1819). Respondent admits that this case holds that the Attorney General is a necessary party to an action involving the charity concerned in that litigation. However, a reading of the case will show that the Attorney General referred to in the case was not the United States Attorney General but was the Attorney General of Virginia.

Petitioner cites the case of *Mount Vernon Mortgage Corporation v. United States,* 236 F. 2d 724 (App. D. C., 1956). A reading of the case will show that this action was brought by the United States Attorney General against a District of Columbia corporation. It would be hard to find a state Attorney General with jurisdiction in the District of Columbia.

Petitioner cites the case of *United States v. Ahtanum Irrigation District,* 236 F. 2d 321 (9 Cir., 1956). This is also a case where the United States Attorney General was appearing on behalf of Indians.

It is manifest that nothing in the Petition for Writ of Certiorari has overturned, or cast doubt on, the legal principle that the State Attorneys General are charged with the duty to enforce charities, charitable trusts and charitable corporations.

V.

There Is No Federal Question Involved in This Case.

This respondent asserts that it is readily apparent, from the documents on file in this action, as well as this respondent's opposition to the Petition, that there is no reason for this Honorable Court to grant certiorari. Certainly, there is no pretense on the part of the petitioner to assert that there is a conflict of decisions which would call upon this Honorable Court to grant certiorari. And certainly it is difficult to construe a federal question of such magnitude as to involve parties not connected with this litigation. As pointed out above, this case revolves squarely on its own merits. The case basically concerns itself with the removal of a charitable corporation as trustee of the assets in its possession for misfeasance.

Conclusion.

It is respectfully submitted that the petition for Writ of Certiorari should be denied for the reasons stated.

Respectfully submitted,

STANLEY MOSK,
Attorney General,
By GEORGE M. GOFFIN,
Deputy Attorney General,
Attorneys for Respondent.

Exhibit 1.

Findings of Fact

I

The Court finds that the Attorney General of the State of California is a proper and necessary officer to appear in this action, and that the appearance is necessary to safeguard the public interest and to prevent the assets of a charitable and benevolent trust from being lost, dissipated, used or consumed for purposes other than the objects of the trust, and is the authorized representative of the beneficiaries of this trust, and the Court further finds that all parties proper and necessary for the determination of this matter, are parties to this action.

II

The Court finds that the defendant and cross-defendant herein, Memorial National Home Foundation, was organized as "The American Gold Star Mothers, Incorporated Memorial National Home Foundation" in July of 1947, pursuant to and as a result of a resolution adopted at the June, 1947 National Convention of the American Gold Star Mothers, Inc., held in Long Beach, California. Eleanor D. Boyd was the then President of the American Gold Star Mothers, Inc. The Court finds that the resolution upon which Eleanor D. Boyd obtained the authority to establish the charitable trust here involved, and pursuant to which she organized the defendant and cross-defendant, Memorial National Home Foundation, was as follows:

> "Resolved that President Eleanor D. Boyd be, and she is hereby authorized and directed to proceed with the formation and establishment of a national home for needy members of Gold Star mothers, which home shall at all times be under the auspices of the American Gold Star Mothers, Inc.

"RESOLVED, further, that the president, Eleanor D. Boyd, be and she is hereby directed to make a full report as soon as possible showing the action which she has taken with respect to the formation of the Memorial National Home."

III.

The Court further finds that the defendant and cross-defendant, Memorial National Home Foundation, is a charitable, non-profit corporation, organized under the laws of the State of California, having its principal place of business in Los Angeles County, State of California, and that the original purposes for which the said corporation was organized are:

"(1) To acquire, purchase, lease, hold, build, develop, establish, erect, equip, manage and maintain institutions, and/or homes, and/or rest homes, and/or clubs for the use, mutual benefit, protection, health, welfare and relief of sick, destitute, distressed and needy members in good standing of American Gold Star Mothers, Incorporated, in any State or territory of the United States of America or the District of Columbia.

"(2) To solicit, collect, receive, acquire and hold money and property, real, personal and mixed, by gift, contribution, bequest, devise or otherwise for the purpose of establishing, developing, acquiring, purchasing, leasing, erecting, equipping, managing and maintaining institutions, and/or homes, and/or rest homes, and/or clubs for the use, mutual benefit, protection, health, welfare and relief of sick, destitute, distressed and needy members in good standing of American Gold Star Mothers, Incorporated,

"(3) To act as trustee under charitable and eleemosynary trusts receiving, holding, managing, ad-

ministering and expending property and funds in accordance with the respective trusts upon which the same are acquired and held.

"(4) To receive, hold, manage, administer and expend property and funds upon the general charitable and eleemosynary trusts that the same, either as to principal or income or both, shall be applied to the assistance and support of such charitable or eleemosynary institutions or objects and at such times and to such extent as the corporation may in its judgment deem most conducive to the public welfare.

"(5) To receive, acquire, hold, manage, administer and expend property and funds for charitable and eleemosynary purposes, including the assistance and support of charitable and eleemosynary institutions, associations and undertakings."

IV

The Court further finds that the defendant and cross-complainant American Gold Star Mothers, Inc. is a corporation, duly organized and existing since the year 1929, under and by virtue of the laws of the District of Columbia for public, charitable, loyal and patriotic purposes, having its National Headquarters in Washington, D.C., and that the said organization has more than 500 chapters and more than 20,000 members in good standing, and its membership is restricted to mothers whose "sons and/or daughters served and died in line of duty in World War I, World War II, or the Korean conflict, or died as a result of injuries received in such service."

V

The Court further finds that the general management of the American Gold Star Mothers, Inc. is vested in the National Executive Board thereof.

VI

The Court finds that Eleanor D. Boyd was the President of the defendant and cross-complainant American Gold Star Mothers, Inc., from June 1946 to June 1947 and from June 1948 to June 1952, and the Court further finds that the said Eleanor D. Boyd has been the President and General Manager of the defendant and cross-defendant, Memorial National Home Foundation, during its entire existence.

VII

The Court finds that Eleanor D. Boyd owed and still owes a fiduciary obligation to the defendant and cross-complainant, American Gold Star Mothers, Inc., and the members of its chapters and National Executive Board, in connection with her activities in forming and managing the Memorial National Home Foundation and acting as an officer and President of said corporation.

VIII

The Court further finds that the funds used in the formation of the said defendant corporation, Memorial National Home Foundation, were funds contributed or raised by chapters and members of the American Gold Star Mothers, Inc., and other funds were contributed at the instance, request and in cooperation with the chapters and members of the defendant, American Gold Star Mothers, Inc., for the purpose of establishing a home for sick, destitute, distressed and needy mothers of the American Gold Star Mothers, Inc.

IX

The Court further finds that said Eleanor D. Boyd failed to disclose to the defendant, American Gold Star Mothers, Inc., its National Executive Board, its chapters and members, material facts in the changing of the organ-

izational structure of the defendant and cross-defendant, Memorial National Home Foundation. The Court further finds that the said Eleanor D. Boyd stated to the National Executive Board, chapters and members of American Gold Star Mothers, Inc., that the defendant and cross-defendant, Memorial National Home Foundation, was organized for tax purposes but that the said organization was at all times under the "control and management" of defendant and cross-complainant, American Gold Star Mothers, Inc., and that the members and chapters of the American Gold Star Mothers, Inc. and its National Executive Board relief upon said statements in making the contributions and in cooperating in raising the funds referred to in Paragraph VIII, above.

X

The Court further finds that hostility, strife and antagonism has existed and does exist between members of the Board of Directors of the defendant, Memorial National Home Foundation, and particularly between its president, Eleanor D. Boyd, and members of the American Gold Star Mothers, Inc., and its National Executive Board. The Court further finds that the defendant and cross-defendant, Memorial National Home Foundation, and its President, Eleanor D. Boyd, cannot, with fairness and impartiality, carry out the provisions of its charter, insofar as its beneficiaries are concerned, under existing conditions without detrimental results to its trusts and beneficaries.

XI

The Court further finds that the defendant, Memorial National Home Foundation, purchased real and personal property at Ojai, California, at the approximate purchase price of $55,000; that the property operates at a loss of

approximately $8,000 per year; that the said property was purchased as a home for "needy and distressed parents" of American Gold Star Mothers, Inc.; and that no plans are available for its permanent development for the trust purposes. The Court further finds that governmental restrictions prohibit the use of the said Ojai property for a home for "needy and distressed parents." The Court finds that the initial payment on account of the purchase price was from funds contributed by American Gold Star Mothers, Inc., its National Executive Board, and its members, chapters and friends. The Court further finds that it is impossible without an accounting to determine just what extent funds were so contributed and to what extent funds were derived from the operation of the Truman Boyd Manor Housing Development, and that a detailed accounting should be made to this Court.

XII

The Court further finds that the Truman Boyd Manor is a housing development consisting of 91 acres of land and 1,000 operating house units, an infirmary, and miscellaneous buildings acquired on May 29, 1953, from the United States Government under and by virtue of the provisions of the "Lanham Act", at a cost of approximately $138,000, and that the funds for its acquisition came from revenue accumulated from the operation of the said Truman Boyd Manor.

XIII

The Court further finds that the acquisition of the Truman Boyd Manor was principally through the endeavors of Eleanor D. Boyd, acting by and for the American Gold Star Mothers, Inc. The Court finds that the Housing and Home Finance Agency, Public Housing

Administration, did believe that the said Truman Boyd Manor was being conveyed to an organization which was an integral part of and controlled by the defendant, American Gold Star Mothers, Inc.

XIV

The Court further finds that the gross income of the Truman Boyd Manor is the sum of approximately $45,000 per month.

XV

The Court further finds that all of the property, both real and personal, now in the possession or under the control of Memorial National Home Foundation, is property held by it for benevolent and charitable purposes.

XVI

The Court further finds that all of the funds accumulated prior to the acquisition of Truman Boyd Manor on May 29, 1953, were funds accumulated for benevolent and charitable purposes and held in trust by the Memorial National Home Foundation for the purposes as set forth in paragraph III herein, and, further, that it is impossible to determine the amount of said trust without an accounting of the same, and further that an accounting should be conducted under the auspices of this Court.

XVII

The Court further finds that all of the property, both real and personal, acquired from the United States of America, acting through the Housing and Home Finance Agency, Public Housing Administration, under and pursuant to the powers and authority contained in the provisions of the Lanham Act (54 Stat. 1125; 42 U.S.C. 1521), together with the revenue derived from the operation of the said property, is held in trust for benevolent

and charitable purposes by the defendant and cross-defendant, Memorial National Home Foundation, for "needy and distressed parents" of World War II veterans for the purposes as set forth in paragraph III herein, but limited to needy and distressed parents of World War II veterans.

XVIII

The Court further finds that no "home" has been constructed or purchased for needy and distressed Gold Star parents.

XIX

The Court further finds that the defendant and cross-defendant corporation, Memorial National Home Foundation, and its Board of Directors are under the dominant control of Eleanor D. Boyd, and that while the Court does not question the honesty and integrity of Eleanor D. Boyd, it feels that she lacks experience to operate either of the two trusts as herein set forth and is unduly influenced by passion and prejudice emanating from personal differences with members of the National Executive Board and members of the chapters of the American Gold Star Mothers, Inc.; that certain other members of the Board of Directors, while having experience and ability, wholly lack the time necessary to devote to the affairs of these trusts; that certain other members of the Board of Directors were chosen by Eleanor D. Boyd for her personal reasons and are mere "figureheads" on the Board of Directors; and that all of the members of the Board of Directors delegate their authority to Eleanor D. Boyd and permit Eleanor D. Boyd to dominate and control the actions of the Board of Directors.

XX

The Court further finds that the defendant and cross-defendant, Memorial National Home Foundation, has abused and abandoned its trusts and new trustees should be appointed to carry out the terms of the trusts.

XXI

The Court further finds that not only for the best interests of the beneficiaries but for the safeguarding of the public interest and the prevention of additional assets being lost, dissipated or consumed for purposes other than the objects of the trusts, it is mandatory that the trustee, Memorial National Home Foundation, be removed and new trustees appointed by this Court to fulfill, perform, and carry out the purposes of the trusts.

XXII

The Court further finds that an accounting should be made to this Court and that the present trustee, Memorial National Home Foundation, should be restrained from making any expenditures in connection with these trusts, other than for the operation of the businesses now being conducted; that a receiver be appointed; an accounting be made; that the assets of these trusts be transferred to new trustees to be appointed by this Court.

XXIII

The Court further finds that the allegations of the First Affirmative Defense, Second Affirmative Defense, Third Affirmative Defense, Fourth Affirmative Defense, Fifth Affirmative Defense, Sixth Affirmative Defense, Seventh Affirmative Defense and Eighth Affirmative Defense contained in the Answer of defendant, Memorial National Home Foundation, as may conflict with the specific findings above made are untrue and further finds there is no merit in the said affirmative defenses.

XXIV

The Court further finds that the allegations of the First Affirmative Defense, Second Affirmative Defense, Third Affirmative Defense, Fourth Affirmative Defense, Fifth Affirmative Defense, Sixth Affirmative Defense, Seventh Affirmative Defense and Eighth Affirmative Defense contained in the Answer to the Amended Cross-Complaint of defendant and cross-defendant, Memorial National Home Foundation, and defendant Eleanor D. Boyd, as may conflict with the specific findings above made are untrue and further finds there is no merit in the said affirmative defenses.

CONCLUSIONS OF LAW

I

Money or property given or bequeathed to a charitable and benevolent corporation, or to a non-profit organization, organized for charitable purposes, is given or bequeathed for the uses and purposes for which the corporation was created, and the same are part of the corpus of a trust for such uses and purposes. All of the assets of the defendant and cross-defendant, Memorial National Home Foundation, were given to, acquired and received by the said Memorial National Home Foundation for "charitable and benevolent purposes" and are held in trust by the defendant, Memorial National Home Foundation for those purposes.

II

The Attorney General of the State of California is a proper and necessary officer to appear in any action where necessary to safeguard the public interest and to prevent the assets of a charitable and benevolent trust from being lost, dissipated, used or consumed for purposes other than the objects of the trust.

III

Where a "charitable and benevolent corporation" holding property in trust, because of hostility, strife and antagonism, cannot properly function, it is proper that the Court take action to preserve the trust and to carry out its purposes and remove a present trustee and appoint a new trustee.

IV

Where a charitable trustee's course of conduct demonstrates that it has abused and abandoned its trust, said trustee should be removed.

V

A Court may remove a trustee of a charitable trust if his continuing to act as trustee would be detrimental to the accomplishment of the purposes of the trust.

Dated: This ..... day of ....., 1956.

.....

Judge of the Superior Court

Exhibit 2.

INTERLOCUTORY JUDGMENT.

I.

IT IS ADJUDGED AND DECREED that the Attorney General is a proper and necessary party to this action to safeguard the public interest and to prevent the assets of a charitable and benevolent trust from being lost, dissipated, used or consumed for purposes other than the objects of the trusts, and that all parties proper and necessary to a determination of this matter are parties to this action.

II.

IT IS FURTHER ADJUDGED AND DECREED that the defendant and cross-defendant MNHF is a non-profit corporation for charitable purposes organized under the laws of the State of California, and that the property in the possession of said corporation is held in trust for the charitable and benevolent purposes and for the uses and purposes set forth in the original Articles of Incorporation of said corporation as follows:

"(1) To acquire, purchase, lease, hold, build, develop, establish, erect, equip, manage and maintain institutions, and/or homes, and/or rest homes, and or clubs for the use, mutual benefit, protection, health, welfare and relief of sick, destitute, distressed and needy members in good standing of American Gold Star Mothers, Incorporated, in any State or territory of the United States of America or the District of Columbia.

"(2) To solicit, collect, receive, acquire and hold money and property, real, personal and mixed, by gift, contribution, bequest, devise or otherwise for the purpose of establishing, developing, acquiring, pur-

chasing, leasing, erecting, equipping, managing and maintaining institutions, and/or homes, and/or rest homes, and/or clubs for the use, mutual benefit, protection, health, welfare and relief of sick, destitute, distressed and needy members in good standing of American Gold Star Mothers, Incorporated.

"(3) To act as trustee under charitable and eleemosynary trusts receiving, holding, managing, administering and expending property and funds in accordance with the respective trusts upon which the same are acquired and held.

"(4) To receive, hold, manage, administer and expend property and funds upon the general charitable and eleemosynary trusts that the same, either as to principal or income or both, shall be applied to the assistance and support of such charitable or eleemosynary institutions or objects and at such times and to such extent as the corporation may in its judgment deem most conducive to the public welfare.

"(5) To receive, acquire, hold, manage, administer and expend property and funds for charitable and eleemosynary purposes, including the assistance and support of charitable and eleemosynary institutions, associations and undertakings."

III.

IT IS FURTHER ADJUDGED AND DECREED that all funds and properties acquired, held, possessed or owned by MNHF, other than Truman Boyd Manor, a housing project (and income derived therefrom) in Long Beach, California, are held in trust by MNHF for members of AGSM, Inc., in accordance with Paragraph II of this Interlocutory Judgment; and

IT IS FURTHER ADJUDGED AND DECREED that Truman Boyd Manor and the income derived therefrom, are held in trust by MNHF for members of AGSM, Inc., in accordance with Paragraph II of this Interlocutory Judgment, but limited to parents of World War II servicemen.

IV.

IT IS FURTHER ADJUDGED AND DECREED, in accordance with the Findings of Fact heretofore made and signed, that defendant and cross-defendant MNHF be removed as trustee of all assets in its possession and under its control, and that this Court will appoint a successor trustee or trustees to continue the duties of the trust and to carry out its objectives and purposes.

V.

IT IS FURTHER ADJUDGED AND DECREED that pending the appointment of a new trustee, or trustees, R. E. Allen, 2421 West Beverly Blvd., Los Angeles, California, and GEORGE D. LYON, are hereby appointed Receivers herein to take into possession and safely keep until the further order of this Court all of the assets, property, money of whatever kind or nature, books records, files, and papers, of MNHF; that MNHF, its directors, officers, managers, and agents, and each of them, and all other parties having property in their possession or under their control belonging to MNHF, are hereby directed to deliver the same to said Receivers. That the Receivers are hereby required to furnish, on qualifying, an undertaking in the sum of THREE HUNDRED THOUSAND DOLLARS ($300,000.00), and to take the oath required by law.

VI.

IT IS FURTHER ADJUDGED AND DECREED that pending the qualification of a Receiver, MNHF and its officers and directors, be and they hereby are restrained from using

any of the assets in its possession or under its control for any purpose or purposes whatsoever, other than the normal operation of the properties known as Truman Boyd Manor and Ojai, and in the payment of such indispensable emergency direct aid to persons who had applied to MNHF for such aid and to whom, or for whose benefit said foundation had committed itself to the giving of such aid before the date of the minute order of this Court, entered on October 24, 1956.

VII.

IT IS FURTHER ADJUDGED AND DECREED that MNHF forthwith render an accounting to this Court of all assets in its possession or under its control, and of all income received by it, and disbursements made by it during the term of its trust, including the source and application of all funds.

VIII.

IT IS FURTHER ADJUDGED AND DECREED that this Court appoint a new trustee, or trustees, to carry out the provisions of the trust, having as its purposes the provisions as set forth in the original Articles of Incorporation of the Memorial National Home Foundation, as set forth in Paragraph II of this Interlocutory Judgment.

IT IS FURTHER ADJUDGED AND DECREED that the Memorial National Home Foundation give notice to all persons having claims against the said trustee, or trustees, to present said claims to the president of the corporation within a reasonable period of time, and the claims shall be heard and determined by the president and officers of the corporation, subject to the approval of this Court.

IX.

IT IS FURTHER ADJUDGED AND DECREED that defendant and cross-complainant, AGSM, Inc., recover its costs of suit out of trust assets held by MNHF.

X.

IT IS FURTHER ADJUDGED AND DECREED that this Court from time to time make such other and further orders as are competent, lawful, and proper, for a complete determination of this action.

THE CLERK IS ORDERED TO ENTER THIS JUDGMENT.

Dated: This ..... day of ....., 1956.

.....

LLOYD S. NIX,
Judge of the Superior Court.

Exhibit 3.

OPINION OF THE DISTRICT COURT OF APPEAL.

[Civ. No. 22766. Second Dist., Div. Two. Aug. 1, 1958.]

Edmund G. Brown, as Attorney General, Plaintiff and Respondent, v. Memorial National Home Foundation (a Nonprofit Charitable Corporation) *et al.*, Appellants; American Gold Star Mothers, Inc. (a Nonprofit Charitable Corporation), Defendant and Respondent.

[Civ. No. 22871. Second Dist., Div. Two. Aug. 1, 1958.]

Edmund G. Brown, as Attorney General, Plaintiff and Respondent, v. Memorial National Home Foundation (a Nonprofit Charitable Corporation), Appellant; American Gold Star Mothers, Inc. (a Nonprofit Charitable Corporation), Defendant and Respondent; R. E. Allen *et al.*, Receivers and Respondents.

Appeals from a judgment of the Superior Court of Los Angeles County and from an order approving, settling and allowing report and first account current of receivers. Lloyd S. Nix, Judge. Judgment affirmed; other appeals dismissed.

Action for declaratory relief with respect to conflicting claims as to the control of a charitable corporation. Judgment removing the corporation as trustee and granting other relief, affirmed.

Trent G. Anderson, Jr., Wright, Wright, Coldwater & Wright, Loyd Wright, Richard M. Coldwater, Dudley K. Wright and George W. Trammell for Appellants.

Edmund G. Brown, Attorney General, in pro. per., and George M. Goffin, Deputy Attorney General, for Plaintiff and Respondent.

Wise, Kilpatrick & Pulley, George E. Wise and Robert J. Kilpatrick for Defendant and Respondent.

Loeb & Loeb and Herman F. Selvin for Receivers and Respondents.

ASHBURN, *J.*—Two appeals in the same case are presented together. One of them (No. 22766) is taken from a judgment removing Memorial National Home Foundation (hereinafter designated as Foundation) as trustee of a charitable trust and granting other relief; the other (No. 22871) attacks an order fixing compensation of receivers, etc.

APPEAL FROM JUDGMENT

Basically the litigation is a struggle between Foundation and American Gold Star Mothers, Inc. (herein referred to as Gold Star) for control of the assets of charitable trusts created for the benefit of Gold Star mothers. The attorney general instituted an action against both of these corporations seeking declaratory relief as to their conflicting claims; Gold Star filed a cross-complaint. The assets were in the name and under the control of Foundation. The court held it had abused and abandoned its trusts, should be removed as trustee and a new trustee should be appointed; it also appointed receivers to manage the property pending the selection of a successor trustee, the taking of an accounting from Foundation, etc. Though designated as interlocutory, this court held the judgment to be final for purposes of appeal (Brown v. Memorial Nat. etc. Foundation, *158 Cal. App. 2d—[322 P. 2d 600]).

Gold Star's ultimate position is that Foundation is its subsidiary and agent which acquired title to property in-

*Advance Report Citation: 158 A.C.A. 513.

tended for use in furtherance of Gold Star trusts and then repudiated those trusts, declared its independence of Gold Star and dedicated the property to partially different uses and to the exclusion of Gold Star management. Foundation and appellant Eleanor D. Boyd come to rest upon the proposition that Foundation has been at all times a distinct entity which never was a subsidiary of Gold Star, that its trusts are defined by its charter, which basic instrument it has amended to change the scope of the trusts as it had a lawful right to do.

The appellants (Foundation and Eleanor D. Boyd, cross-defendant) argue first that the evidence is insufficient to sustain the court's findings and conclusions as to the trusts assumed by Foundation and the class of beneficiaries to be benefited thereby. This raises the important question in the case. Did Foundation, under the dominating influence of Mrs. Boyd, acquire property and money dedicated to the relief of members of Gold Star and attempt to divert it to uses which defeat, at least partially, the trust for the benefit of members of Gold Star? The initial assets belonged to Gold Star; those and subsequent acquisitions were turned over to Foundation, held in its name, administered and claimed by it, and the claims of Gold Star with respect thereto were denied and ignored by Foundation. The story is long, but the result seems clear—that Foundation did acquire property (cash and other donations and grants) to be held in trust for members of Gold Star, and having done so diverted them to uses divergent from and partially destructive of those of Gold Star, and also excluded Gold Star from any voice in administration of the trust.

Gold Star, which has its headquarters in Washington, D.C., was formed as a corporation for charitable and

patriotic purposes under the laws of the District of Columbia, in January, 1929; under the name of American Gold Star Mothers. Its purposes were stated as follows: "[T]o unite with loyalty, sympathy, benevolence, charity, and love for each other, mothers whose sons or daughters have made the supreme sacrifice while in any branch of the Military or Naval Service of the United States of America, or who have died as a result of such service, . . ." By amendment of 1937 the objects were restated to contain the following definition of purposes: "To extend needful assistance to all Gold Star Mothers and when possible, to their descendants . . . This is an association of Mothers whose sons and daughters served and died in the Allied Cause in the Great World War, or died as a result of such service." In November, 1950, the name was changed to "American Gold Star Mothers, Inc." and the objects again amended to add a definition of the word "mothers" as used in the original and amended articles, viz., "mothers whose sons or daughters have made the supreme sacrifice while in any branch of the Armed Services of the United States of America or have died as result of such service and are designated as 'Gold Star Mothers' by the laws of the Congress of the United States and/or the Rules and Regulations issued by the Department of National Defense or any branch thereof"; the amendment retained the following expressed purpose: ". . . to extend needful assistance to all Gold Star Mothers and when possible to their descendants."

In 1950 Mrs. Boyd, then president of Gold Star described the organization as the one "that has been known for more than twenty years as the National Organization for Gold Star Mothers." At the time of trial in July, 1956, it had more than 500 chapters and over 20,000 members in good standing. Membership dues are three

dollars a year and fathers of persons dying as a result of war injuries become associate members without vote and without dues.

Mrs. Boyd was elected president of Gold Star in June, 1946, and continued to be such until June, 1952, with the exception of the period from June, 1947, to June, 1948. Prior to the convention of June, 1947, she had conceived or adopted the idea of establishing a home for needy members of Gold Star. At that meeting she presented the matter as a "No. 1 objective of the organization," saying in part: "I feel we should keep faith with our sons and daughters by forming a Foundation within our present organization for a National Memorial Home for these forgotten mothers. This can be done under the direction of the American Gold Star Mothers, Inc., which is a non-profit organization . . ." A resolution fostered by her was adopted, reading as follows: "RESOLVED that President Eleanor D. Boyd be, and she is hereby authorized and directed to proceed with the formation and establishment of a national home for needy members of Gold Star mothers, which home shall at all times be under the auspices of the American Gold Star Mothers, Inc.

"RESOLVED, further, that the president, Eleanor D. Boyd, be and she is hereby directed to make a full report as soon as possible showing the action which she has taken with respect to the formation of the Memorial National Home." Articles of Incorporation for such a project had been previously drafted and were filed in July, 1947. They created a charitable nonprofit corporation under the laws of California. "[T]he primary purpose of its Articles of Incorporation was to benefit members of American Gold Star Mothers, Inc." according to appellants' opening brief.

Where a corporation becomes trustee of a benevolent trust the courts look first to its charter to determine the nature and extent of the dedication of its assets to eleemosynary purposes. Pacific Home v. County of Los Angeles, 41 Cal. 2d 844, 852 [264 P. 2d 539]: "Similarly, all the assets of a corporation organized solely for charitable purposes must be deemed to be impressed with a charitable trust by virtue of the express declaration of the corporation's purposes, and notwithstanding the absence of any express declaration by those who contribute such assets as to the purpose for which the contributions are made. In other words, the acceptance of such assets under these circumstances establishes a charitable trust for the declared corporate purposes as effectively as though the assets had been accepted from a donor who had expressly provided in the instrument evidencing the gift that it was to be held in trust solely for such charitable purposes. It follows that neither plaintiff nor its successor could legally divert its assets to any purpose other than charitable purposes . . ." In re Los Angeles County Pioneer Society, 40 Cal. 2d 852, 860 [257 P. 2d 1]: "'[A] devise to a society organized for a charitable purpose without a declaration of the use to which the gift is to be put is given in trust to carry out the objects for which the organization was created.'"

The original articles of Foundation adopt the name "American Gold Star Mothers, Incorporated, Memorial National Home Foundation." Its purposes as therein stated are to acquire, manage and maintain homes, rest homes, etc. for "distressed and needy members in good standing of American Gold Star Mothers, Incorporated, in any State or Territory"; to receive funds and other property to be used for the "protection, health, welfare

and relief of sick, destitute, distressed and needy members in good standing of American Gold Star Mothers, Incorporated." The articles also provide for a board of five directors and prescribe that "[a] majority thereof shall be members in good standing of American Gold Star Mothers, Incorporated"; the directors "shall be the sole and only members of the corporation."[1] Although the organization of a separate corporation was probably a violation of the convention's mandate (cf. Shattuck v. Wood Memorial Home, 319 Mass. 444, [66 N. E. 2d 568, 573]), the original articles afford evidence of a deliberate effort to comply with the resolution of June, 1947; the corporate name "American Gold Star Mothers, Incorporated, Memorial National Home Foundation" definitely ties into that of the organization whose convention authorized the establishment of a national home for needy members. The restriction of membership in the new corporation to members of Gold Star, with such members dominating the board of directors, effectively placed the control in the parent corporation. At that point Foundation truly could be said to exist "under the auspices" of Gold Star and to be its subsidiary. Although Mrs. Boyd testified at the trial that she did not think of the home as an American Gold Star Mothers project and did not explore the possibility of working it out within the framework of Gold Star, and further declared that the resolution of June, 1947, did not control the Foundation, her conduct at the time of organizing that corporation paints a different

---

[1]This limitation of membership in such corporations was then legal (Civ. Code, §600), as it is now (Corp. Code, §9003).

picture which is far more persuasive than the assertions made at the trial of July, 1956.[2]

The fact of organizing a separate corporation, though contemplated by Mrs. Boyd in advance of the June, 1947 convention, was not then disclosed because, as she testified, she did not consider that necessary at the time. The fact was first stated in a bulletin sent by Mrs. Boyd to all chapters and members of Gold Star in July, 1947, the explanation being that this was necessary for exemption from taxes.[3] At that 1947 convention the members contributed 441 dollar bills to be used in establishing the home; additional donations had increased the total to $1,498 by the time said bulletin was issued.

When apprised of the fact of a separate organization, various members, chapters and officers of Gold Star became apprehensive and dissatisfied and there was acrimonious correspondence between them and Mrs. Boyd, who not only was president of Gold Star at the time but was also president of Foundation continuously from its organization and selected and dominated its board of directors at all times. In further bulletins to chapters and

---

[2]The court recited in its findings that it "does not question the honesty and integrity of Eleanor D. Boyd" but it specifically found that she "owed and still owes a fiduciary obligation to the defendant and cross-complainant, American Gold Star Mothers, Inc., and the members of its chapters and National Executive Board, in connection with her activities in forming and managing the Memorial National Home Foundation and acting as an officer and President of said corporation," and that such fiduciary obligation had been violated.

[3]This viewpoint was elaborated in a complaint filed by Foundation against Gold Star in 1952 seeking control of the assets of the trust. The pertinent allegation is that Gold Star "has no provision in its Constitution or By-Laws for its funds upon dissolution to be delivered to a nonprofit foundation or other corporation; that as a result thereof said defendant is unable to obtain an exemption from Federal Taxation Laws." But this theory does not appear to have been explained previously to Gold Star officers or members.

members, issued by her in October and December, 1947, she asserted that the authority of the June resolution had been carefully pursued and that a separate corporation was necessary for tax and other reasons. In the third bulletin (in December, 1947) she said: "I am now in receipt of a letter from the National President of the American Gold Star Mothers, Inc., demanding that the National Board have complete control of the Memorial National Home Foundation, that I surrender all monies to her and that I cease sending bulletins to the chapters. A bulletin has also been issued on her letterhead, which states that the Corporation has been rejected by the National Board.

"The Memorial National Home Foundation is still a legal and functioning corporation. It will remain so until action taken by legal delegates in a legally called annual National Convention of the American Gold Star Mothers, Inc. decrees otherwise.

". . . The Directors of the Memorial National Home Foundation have a dual obligation. Their responsibility lies not only in providing a National Home for distressed and needy members of American Gold Star Mothers, Inc., but they must conduct their affairs in such a way that no donor to the Memorial National Home Foundation shall ever question the singleness of purpose for which the funds they gave are applied."

"The National President and National Board of American Gold Star Mothers, Inc. have plenty to do to establish new chapters and carry on other work of the parent organization."

In January of 1948, before the June convention at which she was re-elected president of Gold Star, Mrs. Boyd caused the articles of Foundation to be amended.

The name was changed to "Memorial National Home Foundation," thus dropping the words "American Gold Star Mothers, Incorporated." The provision that a majority of directors must be members of Gold Star was changed to read: "A majority thereof shall be Gold Star mothers (mothers whose children were killed in the service of the United States of America)." The purpose clause of the articles was amended to eliminate reference to members of Gold Star and to say, for the "welfare and relief of sick, destitute, distressed and needy Gold Star mothers (mothers whose children were killed in the service of the United States of America)." This was done without the consent or knowledge of Gold Star, its officers, or national executive board. It was a plain attempt to change the scope of a charitable trust by mere amendment of the trustees' charter.

Counsel for appellants argue that this could be done lawfully but they cite no authority which supports the proposition. Reliance upon In re Los Angeles County Pioneer Society, *supra*, 40 Cal. 2d 852, proves futile, for that case held that an attempted amendment of the charter which was in derogation of the trusts expressed in its original articles was nugatory, the court saying at page 862: "Pioneer's course of conduct throughout these proceedings thus demonstrates that it has abused and abandoned its trust and amply supports the determination of the trial court that a new trustee should be appointed. [Citations.] 'If the trustees abandon or in any way abuse their trust, equity will correct the abuses and remove the offenders.'" It is obvious that a trustee cannot thus change the trust upon which it holds property. This attempt at ex parte divorce was doomed to failure.

In 1950 the Foundation articles were again amended to eliminate the words "needy Gold Star Mothers (mothers

whose children were killed in service to the United States)" and to say: "The purpose for which this corporation is formed is the acquisition and/or creation and operation of a non-profit home for parents of persons who served in the armed forces during World War II and who died of service connected illness or injury." In 1956 they were again amended to substitute these words: "The specific, primary, and only purpose of this corporation shall be the establishment and maintenance of a non-profit home or shelter for destitute, distressed, or needy parents of persons who served in the Armed Forces of the United States during World War II and who died of service connected illness or injury."

It should be noted that the Foundation articles as amended in 1950 and 1956 restrict its beneficiaries to the parents of victims of World War II, while those of Gold Star never have been restricted to any specific war or even to its own members. Its membership extends to "mothers whose 'sons and/or daughters served and died in line of duty in World War I, World War II, or the Korean conflict, or died as a result of injuries received in such service.'" As shown by its articles and the testimony of Mrs. Boyd "one of the purposes of that organization is to help all Gold Star Mothers, whether they be members or not of [the] organization."

The erroneous notion that this legerdemain of charter amendments could succeed is reflected in Mrs. Boyd's activities at all subsequent times. Legerdemain would seem a harsh word were it not for the fact that Mrs. Boyd, who was reelected president of Gold Star in 1948 and each successive year until 1952, who was at all times president and dominating personality of Foundation, actively, but without disclosing the attempted divorce, encouraged and solicited all chapters and members of Gold Star to raise

money for the home through such familiar devices as bazaars, raffles, sales of plaques, donations in honor of the president's birthday, etc.; all this was done under the assurance that it was done for "your home." This procedure continued until Mrs. Boyd and Foundation openly repudiated any trust for members of Gold Star (as such) in May, 1953. At that time Foundation had accumulated from members' activities and similar sources, $73,577.12. All of it had been contributed, as found by the trial judge, "for the purpose of establishing a home for sick, destitute, distressed and needy mothers of the American Gold Star Mothers, Inc." As stated in June, 1949, by Mrs. Boyd, in a newspaper known as "Gold Star Mothers,"[4] the said funds "largely represent donations from individual chapters and from the mothers in memory of their sons, or other loved ones."

At the June, 1948, convention of Gold Star, where she was reelected president, Mrs. Boyd told the assembled members that the word "incorporated" had been dropped from the name of Foundation, but did not mention elimination of the words "Gold Star Mothers." She said (contrary to the existing fact) that the controlling vote in Foundation was with Gold Star and would so continue; also that Gold Star Mothers were in control; that the Foundation belonged and always would belong to Gold Star and "it is your organization."

Although the delegates made Mrs. Boyd president, they also adopted a resolution at the same convention, reading "We, the members of American Gold Star Mothers, Inc., . . . desire that the National Memorial Home Foundation be an integral part of our organization under the

---

[4]Published by Gold Star but controlled by Mrs. Boyd in all respects and sent to all chapters and members of Gold Star.

supervision and management of our duly elected and appointed officers and committees." They rejected a proposed resolution worded as follows: "We, the delegates . . . . desire that the present directors of the Memorial National Home Foundation, American Gold Star Mothers, be kept and the Foundation be under the present management." Mrs Boyd, though not so stating to the convention, decided to ignore the resolution which had been passed, and actually reported to Foundation's attorney in Los Angeles that the other one had been adopted. At the trial she said: "I considered it null and void, having not carried or lost by the method we had used for resolutions," further explaining that it had not passed by a two-thirds vote. In fact, there was no such requirement in by-laws or custom. Never did she take any steps to conform to this resolution.

During World War II the United States Government had established at Long Beach a temporary project for defense workers and armed forces personnel consisting of about 90 acres of land with some 1,000 family dwelling units on it. It had been named Truman Boyd Manor in honor of Mrs. Boyd's son who had been killed in the service. As early as August, 1947, Mrs. Boyd began a campaign to induce the government to relinquish this project to Foundation as a home for Gold Star Mothers, under the authority of the Lanham Act (42 U.S.C.A. § 1581(b)). In these activities she contacted senators, representatives, Public Housing Administration officials and others having authority concerning the subject. She now claims to have acted solely as president of Foundation, but the record she made at the time refutes this contention. She told various senators that "Memorial National Home Foundation is incorporated to take care of the needy members of the American Gold Star Mothers, Inc., as well as other needy Gold Star Mothers and fathers.

"The American Gold Star Mothers, Inc., is a National organization qualified in the District of Columbia after World War I. The Memorial National Home Foundation was incorporated to take care of the needy Gold Star Mothers and Fathers on a National scale." Congressman Doyle of Long Beach was quoted in one of the letters in evidence as stating that "he participated with Mrs. Boyd in the Congressional and Navy Department discussions at the time the enabling legislation was passed, and that it was assumed on all sides that this was a charitable project of the American Gold Star Mothers, Inc." There was much correspondence with government officials, most of which was upon the letterhead of Gold Star and signed by Mrs. Boyd as president of that organization and chairman of the board of Foundation. She introduced herself and was introduced to various officials as president of Gold Star. Finally, in 1950, an amendment was incorporated in the Lanham Act which was intended and understood to apply to Gold Star, viz.: "[W]here the Administrator determines that the housing involved is urgently needed by parents of persons who served in the armed forces during World War II and died of service-connected illness or injury."[5]

When formal application for relinquishment was made it was presented in the name of Foundation. However,

---

[5]This was the language of the statute at the time of relinquishment to Foundation was approved on June 7, 1950, "for the purposes of acquiring and operating a Home for the parents of persons who served in the Armed Forces during World War II and who died of service connected illness or injury."

By amendment of October 26, 1951, the words "during World War II" were stricken and the following phrase was substituted: "at any time on or after September 16, 1940, and prior to July 26, 1947, or on or after June 27, 1950, and prior to such date thereafter as shall be determined by the President." (65 Stat. 648 ch. 577, §2.)

it included a copy of a resolution adopted at the Gold Star Convention of 1949, reading: "RESOLVED that the American Gold Star Mothers, Inc. authorize the Chairman of Memorial National Home Foundation to proceed to acquire the emergency Housing Project . . . that project being ninety (90) acres, which assures us of plenty of room to take care of the mothers and fathers who need assistance; to be known as the Memorial National Home Foundation property for Gold Star mothers and fathers throughout the nation."[8] Also included was a financial statement of Gold Star written upon its own letterhead. This application caused surprise and questioning within the Housing Administration (which had jurisdiction over this matter) and it required that a relinquishment of the property to Foundation be approved in writing by Gold Star. When this was received, and the executive board of Gold Star had appeared in support of the application, same was approved, for the Housing Administration then concluded that "Memorial National Home Foundation was a corporation that had been established to take title to the property as an operating organization for" American Gold Star Mothers, Inc. The court found, upon adequate evidence, "that the Housing and Home Finance Agency, Public Housing Administration, did believe that the said Truman Boyd Manor was being conveyed to an organization which was an integral part of and controlled by the defendant, American Gold Star Mothers, Inc." Before the matter could be accomplished the Korean conflict arose and a freeze was placed on all such relinquishments.

---

[8]The corporate name of Gold Star did not include "Inc." until the amendment of November, 1950. It is a fair inference that the phrase "Gold Star Mothers" had a generally accepted secondary meaning which signified respondent corporation and its members.

Early in 1953 the subject of lifting the freeze on this property was considered and the question again arose whether Foundation would be a proper grantee. Mrs. Boyd then furnished the authorities a copy of a resolution adopted at the Gold Star Convention of 1952, to the effect "that the National Executive Board of the American Gold Star Mothers, Inc., uphold and recommend the continuance of the policy of the Memorial National Home Foundation, also, that in accord therewith each chapter shall proceed to annually elect a member to the advisory committee of the Memorial National Home Foundation. . . ." Careful scrutiny of this resolution shows that it related only to the policy of the Foundation to have members of Gold Star upon its advisory committee. But the resolution satisfied the government officials, the freeze was lifted and the property deeded to Foundation on May 20, 1953, for a price of $138,404.63[7] with a down payment of $944.66. The entire balance was paid in the ensuing year out of current revenues from the property, which grosses approximately $500,000 a year. An appraisal made for Foundation showed a value of $2,698,143.15.

An action was brought in June, 1952, by Foundation against Gold Star to establish its right to all the trust property. It was later voluntarily dismissed and was followed by another similar action filed on July 31, 1953, which was likewise dismissed.

The deed to the government property having been received in May, 1953, Mrs Boyd in that same month openly repudiated any trust for the benefit of members of Gold Star. This she did through a news release given to the

---

[7]This represented the cost of the land to the Government of $133,182.49, plus a payment in lieu of taxes of $4,277.18, and the sum of $944.66 for accounts receivable.

Long Beach Independent. It said, in part: "Memorial National Home Foundation was incorporated in July, 1947, while Mrs. Boyd was National President of Gold Star Mothers. It has no connection with that organization, however, except that Gold Star Mothers have been invited to name an advisory board." No convention of Gold Star members had been told that these corporations were independent. Mrs Singer, who was president of Gold Star at the time of trial, testified that she always believed that control and ownership of Foundation was in Gold Star; also that Mrs. Boyd always said at chapter meetings "this is yours. It is for American Gold Star Mothers." Mrs. Broom, who was first vice president of Gold Star during all the years of Mrs. Boyd's incumbency as president, never learned of the amendments to the charter of Foundation until 1953. Mrs. Boyd testified at the trial that she did not feel that Gold Star was the parent organization of Foundation.

Shortly after the press release the 1953 Convention of Gold Star was held in June, and a resolution was there adopted "that the National Executive Board of American Gold Star Mothers, Inc., be, and it is hereby authorized and directed, in order to protect the interests of the members and Chapters of American Gold Star Mothers, Inc., to take all action and to do all things as said National Executive Board shall, in its sole discretion, deem necessary and proper, for bringing about a change in the control, management and operation of Memorial National Home Foundation so as to place the said control, management and operation of such Foundation in the duly authorized representatives of American Gold Star Mothers, Inc. . . ."

In May, 1951, while the Long Beach property was frozen, Foundation, without consulting Gold Star, its offi-

cers or executive board, acquired certain property at Ojai, California, professedly as a home "for Gold Star parents." The court found "that the said property was purchased as a home for 'needy and distressed parents' of American Gold Star Mothers, Inc." The property consists of eight acres which then had on it a single residence and servants' quarters. The purchase price was $55,330, and Foundation spent $20,212.74 on improvements, consisting mainly of a single cottage which was supposed to be a model of homes for needy mothers. The court found that the initial payment on the purchase price "was from funds contributed by American Gold Star Mothers, Inc., its National Executive Board, and its members, chapters and friends." Though no finding to that effect was made, it seems a fair inference that later payments on the price and other expenses came from the earnings of Truman Boyd Manor. All contributions had been mingled as received and appellants' brief says: "Exhibit X shows that all of the net cash receipts through May 31, 1952, were invested in the Ojai property excepting only the sum of $1,007 shown as cash unrestricted at that date." The Ojai property has had a total income of less than $2,000 and a total loss of over $40,000, an average of $8,000 a year. The purchase was made somewhat hurriedly so that Mrs. Boyd could announce at the June Convention of Gold Star the existence of a home for mothers.

The property was and is zoned for single family residence. After its purchase an effort was made by Foundation to change the zoning, but this failed because of protests of neighbors who stressed a shortage of water in the area. Foundation has no license from the state to care for needy persons, and no definite plans have been made for the further improvement of this property. The only permanent resident has been a caretaker. There have been

a few overnight and weekend guests. Foundation also obtained an option to buy an adjoining 32 acres and Mrs. Boyd solicited all chapters and members of Gold Star to contribute $200 per chapter toward the option price. Addressed to "Dear Presidents and Chapter members of American Gold Star Mothers, Inc.," one appeal commenced as follows: "Memorial National Home Foundation was organized to benefit our Gold Star Mothers and Fathers." After the June, 1953, resolution of the Gold Star Convention, Foundation placed on a single door in the Ojai "Manor House" a plaque reading: "The American Gold Star Mothers, Inc." and has since contended that the total property owned by it and devoted exclusively to the needy members of Gold Star "is a bedroom at Ojai of 187 square feet in area, together with the right to use jointly with other occupants a service area of 2407 square feet, not counting 8.14 acres of land." This was based upon the amount of contributions made prior to the amendment of Foundation's articles in January, 1948,—$2,170.08. Ojai has at all times been a dead loss and promises to be so for an indefinite future time.

The foregoing review of the evidence (which of course is based upon the testimony, exhibits and inferences favorable to respondents; Nichols v. Mitchell, 32 Cal. 2d 598, 600 [197 P. 2d 550]; New v. New, 148 Cal. App. 2d 372, 383 [306 P. 2d 987]), amply sustains the court's findings that all funds accumulated prior to the purchase of Truman Boyd Manor "were funds accumulated for benevolent and charitable purposes and held in trust by the Memorial National Home Foundation for the purposes as set forth in paragraph III herein," which means for the benefit of members of Gold Star in good standing; also that Truman Boyd Manor is held in trust "for needy and distressed parents' of World War II veterans

for the purposes as set forth in paragraph III herein, but limited to needy and distressed parents of World War II veterans."[8]

It thus appears that there were imposed upon Foundation two trusts, one of which is for the benefit of all needy members of Gold Star, and the other, Truman Boyd Manor, for the benefit of needy parents of World War II victims. The first classification grows out of the specific declaration of Foundation's original articles of incorporation and the second out of the circumstances attending the acquisition of Truman Boyd Manor, the statute being expressly restricted to providing relief for World War II parents. The Ojai property probably falls partially within each of the two classifications for it was acquired primarily with funds contributed by members of Gold Star for the expressed purpose of establishing a home for members and secondarily from funds derived from operation of Truman Boyd Manor (for World War II parents only).[9]

The evidence also supports the finding "that the defendant and cross-defendant, Memorial National Home Foundation, has abused and abandoned its trusts and new trustees should be appointed to carry out the terms of the trusts." This is true because all funds and property have remained throughout all the maneuvers of Founda-

---

[8]The phraseology of the statute as amended in 1951 (see footnote 5, *supra*) is broad enough to include the Korean conflict, but the conveyance to Foundation was made on the basis of the 1950 approval of relinquishment and the statute then prevailing.

[9]Under Gold Star management the trust has a wider scope, relief of all Gold Star mothers whether members of the organization or not, except as to Truman Boyd Manor and (in part only) the Ojai property; the benefit of the Long Beach property is limited to parents of World War II victims in its entirety; but Ojai was acquired from two sources, only one of which is limited to World War II parents; the exact proportion must be determined through the accounting ordered by the trial court.

tion impressed with a trust for the exclusive benefit of members of Gold Star, except property which is held in trust for the exclusive benefit of needy parents of victims of World War II,[10] namely, Truman Boyd Manor and the Ojai property; that is to say, that Foundation, as the subsidiary of Gold Star, initially committed itself to a trust for the benefit of members of Gold Star, has never been released from this dedication and could not without concurrence of Gold Star and the court release itself from that fiduciary obligation through charter amendment or other device. So far as Truman Boyd Manor is concerned (and to some extent Ojai), the trust was narrowed to parents of World War II victims through the circumstances of the grant, but it still remains for the benefit of members (regular and associate) of Gold Star. Foundation persists in denial of any obligation to members of Gold Star, as such, and thereby it continues to repudiate its trust and to emphasize the necessity for its removal as trustee.

As an additional ground for removal, the court also found "that hostility, strife and antagonism has existed and does exist between members of the Board of Directors of the defendant, Memorial National Home Foundation, and particularly between its president, Eleanor D. Boyd, and members of the American Gold Star Mothers, Inc., and its National Executive Board. The Court further finds that the defendant and cross-defendant, Memorial National Home Foundation, and its President, Eleanor D. Boyd, cannot, with fairness and impartiality, carry out the provisions of its charter, insofar as its beneficiaries are

---

[10]By courtesy, husbands of members of Gold Star become associate members if they are parents of the victims of the designated wars, World War I, World War II, and the Korean conflict.

concerned, under existing conditions without detrimental results to its trusts and beneficiaries." Also, that Mrs. Boyd dominates Foundation and "is unduly influenced by passion and prejudice emanating from personal differences with members of the National Executive Board and members of the chapters of the American Gold Star Mothers, Inc."

The record is replete with illustrations of hostile reaction on Mrs. Boyd's part to any questioning or criticism of her regime. Reference has been made above to the two actions brought in 1952 and 1953 by Foundation against Gold Star in an effort to exclude it from the management of the trust. Smaller incidents are also revealing. In response to one member's question about the acquisition of a home, Mrs. Boyd said "that she was taking care of it and we would be informed when she was ready." She told the 1951 Convention: "We are directed to take care of the Memorial National Home Foundation and not ask so many questions that are not necessary to be told to you at this time." When told that a Mr. Geisler had a photostatic copy of the charter amendments, Mrs. Boyd said: "You had no business to go down there. That isn't any of your business at all. That is the business of the Memorial National Home Foundation." When Mr. Geisler replied that he thought it the business of all members of Gold Star, she further said: "Well, I don't interfere in your business, and I don't think you should interfere in mine, and this is my business." On another occasion when Mrs. Geisler referred to having photostatic copies of the amendments, the following colloquy occurred; Mrs. Boyd: "You misrepresented or you could not have gotten them." Mrs. Geisler: "I did not misrepresent, the record books are open to all who wish to see them." Mrs. Boyd: "You had to swear you were entitled to them; you had to tell

a lie to get them; you could not have gotten them otherwise." In 1949 a dissident faction of Gold Star organized an entity known as National Gold Star Mothers, and the October issue of the paper "Gold Star Mothers" referred to them as "quislings" and "fifth columnists" and "not honorable Americans."

As to Mrs. Boyd's lack of experience and lack of qualification to manage a two million dollar trust, the history of Ojai above recited furnishes potent proof. The administration of the Long Beach property is also convincing. The city of Long Beach has an ordinance which permits temporary housing until 1961 only; it would cost a million dollars to bring the Truman Boyd Manor up to the ordinance standard; though its gross income is a half million dollars a year, no reserve fund has been set up and no plans have been made to do this work or otherwise construct a home on the premises. True, preliminary drawings were made after this action was filed, but when presented to the City Council of Long Beach they were rejected because the proposed location is directly in the path of a freeway which the State intends to put through the property. The same is true of a duplex plan and a hospital plan submitted to the city. Not more than 20 to 30 Gold Star parents have been given housing in the 994 rental units of this property; they are in scattered units: there are about 300 Navy families there who pay no more rent than do the Gold Star parents. During this long period of relative inactivity and bickering the rents have been accumulating, the total in bank on May 31, 1956 being $103,697.64. Dr. Boyd, husband of appellant, operates a clinic upon the premises but Mrs. Boyd was unable to testify to any facts about his arrangement with Foundation, what rent he paid or whether it ever had been changed.

A charitable trustee will be removed on the same grounds as the trustee of a private trust. Volume 3, Scott on Trusts, section 387, page 2049: "A trustee of a charitable trust may be removed as trustee for the same reasons for which a trustee of a private trust may be removed. Thus he may be removed for serious breaches of trust, for unfitness, for long continued absence and the like. He can also be removed where his views are hostile to the purposes of the trust, as in the case of a religious trust where he ceases to hold religious views which it is the purpose of the trust to promote." To the same effect, see, Restatement of Law of Trusts, section 387, page 1181. That diversion of trust funds to unauthorized uses, inefficiency and mismanagement, hostility to the beneficiaries, assumption of an adverse trust, afford good grounds for such removal is well established.

Civil Code, section 2232: "No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter." Section 2234: "Every violation of the provisions of the preceding sections of this article is a fraud against the beneficiary of a trust." "The power of a court of equity to remove a trustee, and to substitute another in his place, is incidental to its paramount duty to see that trusts are properly executed; and may properly be exercised whenever such a state of mutual ill-feeling, growing out of his behavior, exists between the trustees, or between the trustee in question and the beneficaries, that his continuance in office would be detrimental to the execution of the trust, even if for no other reason than that human infirmity would prevent the co-trustee or the beneficiaries from working in harmony with him, and although charges of misconduct against him are either not made out, or are

greatly exaggerated." (May v. May, 167 U. S. 310, 320, 321 [17 S. Ct. 824, 42 L. Ed. 179].) "If hostility between trustee and beneficiary is such that the best interests of the trust are jeopardized, the trustee will be removed." (45 A. L. R. 381, 333.)

The pleas of laches and estoppel which are aimed at Gold Star cannot be sustained. Firstly, the complaint of the attorney general, as is hereinafter shown, sustains this proceeding regardless of capacity of Gold Star to complain of Foundation's mismanagement or repudiation of the trust. Secondly, the proper administration of a benevolent trust, especially the prevention of departures from its legitimate objects and the redressing of breaches and repudiations of the trust, are matters of large public interest which preclude application of the doctrines of laches and estoppel and particularly so in an action brought by the attorney general. "No length of diversion from the plain provisions of a charitable trust will prevent restoration to its true purpose." (William Buchanan Foundation v. Shepperd (Tex. Civ. App.), 283 S. W. 2d 325, 336.) "The lapse of many years is no bar to such action. 'Generally it is true that no length of time of diversion from the plain provisions of a charitable foundation will prevent its restoration to its true purpose.'" (Shattuck v. Wood Memorial Home, *supra*, 319 Mass. 444 [66 N. E. 2d 568, 573].) To the same effect, see Trustees of Andover T. Seminary v. Visitors of Theological Inst., 253 Mass. 256 [148 N. E. 900, 918].

Appellants argue that neither the attorney general nor Gold Star (which filed a cross-complaint herein) has authority to maintain this action.

As to the attorney general, appellants rely primarily upon section 9505, Corporations Code, which says: "A

nonprofit corporation which holds property subject to any public or charitable trust is subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purposes for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the noncompliance or departure." Section 10207, which appears in the part covering corporations organized for charitable or eleemosynary purposes, contains almost identical language. Counsel say that the statute imposes a condition precedent to a suit by the attorney general, namely, a finding by him that there has been a failure to comply with the trust or a departure from its general purposes; that such finding was not made at bar and therefore the predicate for a suit by the attorney general was not laid. Emphasis is placed upon the fact that this is an action for declaratory relief. The complaint alleges that Foundation has possession and control of charitable trust assets of the value of approximately one million dollars; that Gold Star contends it is entitled as trustee to possession and control of same; that Foundation claims it is entirely independent and not subject to control of Gold Star and is the only proper trustee of said charity; that plaintiff has been unable to determine "the precise nature and extent of the charitable trust and/or trusts involved, or to resolve the dispute between said defendants regarding the right to possession and/or control, as Trustees, of the aforesaid charitable trust assets." Also, "that all the charitable trust assets chargeable to and in the possession and/or under the control of defendant Memorial National Home Foundation, were solicited by and tendered

to said Memorial National Home Foundation with the understanding that said assets were to be administered by the American Gold Star Mothers, Inc., and that at least a substantial portion of said assets would be devoted toward the rendering of aid and assistance to needy and distressed members of said American Gold Star Mothers, Inc." Again, that public interest requires a prompt determination of the nature and scope of the charitable trust or trusts involved, and the designation of the proper trust or trustees to accomplish the purpose or purposes of same. The prayer is for judgment determining the nature and scope of the trusts and which defendant is the proper trustee of each trust; that "defendants be required to account for all assets properly chargeable to said trusts to enable the court to further clarify the rights, and duties of plaintiff in hereafter enforcing and supervising said trusts; as his statutory and common-law duty. Plaintiff also prays for such other and further relief as the court may deem just in the premises, including costs of suit incurred herein."

It is true that the complaint makes no allegation of a breach of trust or departure from its general purposes. But section 9505 does not impose such a finding as a condition precedent to any suit by the attorney general. All counsel seem to agree that that official has an historic right and duty to supervise charitable trusts and to maintain such actions as may be appropriate to protect the public interests therein. Volume 3, Scott on Trusts, section 391, page 2052, says: "In England the records show that even before the enactment of the Statute of Charitable Uses in 1601 suits were brought by the Attorney General to enforce charitable trusts. The community has an interest in the enforcement of such trusts and the Attorney General represents the community in seeing that

the trusts are properly performed." People v. Cogswell, 113 Cal. 129, 136 [45 P. 270, 35 L. R. A. 269]: "The state, as *parens patriae*, superintends the management of all public charities or trusts, and, in these matters, acts through her attorney general. Generally speaking, such an action will not be entertained at all unless the attorney general is a party to it. Such was the rule at common law, and it has not been changed in this state. Even in those states, such as Massachusetts, where, by a special statute, the attorney general is instructed to prosecute such actions, it is declared that the statute does not narrow or diminish in this regard the common-law powers incident to the office. (Parker v. May, 5 Cush. [Mass.] 336.) The principle and rule are thus succinctly stated in Attorney General v. Compton, 1 Younge & C. C. [Eng.] 417: Where property affected by a trust for public purposes is in the hands of those who hold it devoted to that trust, it is the privilege of the public that the crown should be entitled to intervene by its officers for the purpose of asserting, on behalf of the public generally, the public interest and the public right, which, probably, no individual could be found effectually to assert, even if the interest were such as to allow it. (2 Kent's Commentaries, 10th ed., 359; Lewin on Trusts, §665; 1 Daniell's Chancery Practice, §13; Perry on Trusts, §732.)" The soundness of this ruling is emphasized by the California concept that "[t]he attorney-general, as the chief law officer of the state, has broad powers derived from the common law, and in the absence of any legislative restriction, has the power to file any civil action or proceeding directly involving the rights and interests of the state, or which he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights and interests." (Pierce v. Superior

Court, 1 Cal. 2d 759, 761-762 [37 P. 2d 453, 460, 96 A. L. R. 1020].) The Legislature presumptively was cognizant of the Cogswell decision when enacting section 605c Civil Code in 1931 (Stats. 1931, ch. 871, p. 1852), and codifying it as section 9505, Corporations Code, in 1947. It is to be inferred that there was no intention to change the law by stripping the attorney general of a recognized and important function in the absence of clear and explicit language so indicating. Guardianship of Thrasher, 105 Cal. App. 2d 768, 777 [234 P. 2d 230]: "'. . . it is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication. (Lowe v. Yolo County Consolidated Water Co., 8 Cal. App. 167, 174 [96 P. 379]; 23 Cal. Jur. 782, §158.)'" See also Freeman v. Jergins, 125 Cal. App. 2d 536, 552-553 [271 P. 2d 210]. The utmost effect to be attributed to section 9505 is the imposition upon the attorney general of an additional obligation (rather than a mere discretion) to institute suit when he has concluded after investigation that there has been a breach of a charitable trust or a departure from the general purposes for which the corporation was formed. There was no error in ruling that the present suit is properly maintained by the attorney general.

Appellants' argument that Gold Star has no capacity to maintain its cross-complaint rounds out the thought that nobody can maintain an action to correct abuse in administration or repudiation of a charitable trust until the attorney general has made an investigation and reached the decision specified in section 9595, Corporations Code. The argument is that Gold Star has proceeded upon the theory that it has standing to sue as creater of

the trusts held by Foundation, or that it represents the donors to those trusts. It seems to be the law of this state that the trustor or donors of a charitable trust cannot maintain an action such as this independently of the attorney General. O'Hara v. Grand Lodge I. O. G. T., 213 Cal. 131, 139 [2 P. 2d 21], says: "[E]ven if defendant be treated as the creator of this trust, it does not appear what standing it has in this action to claim any interest in the real property. Defendant parted with its entire interest in the property for a valuable consideration, subject to the trust, and retained no reversionary interest therein. Under such circumstances, it has no standing in a court of equity, except as a relator, to attempt to compel the proper execution of the trust, or to claim any interest in the trust property. The law is well settled that when property has become fully vested in trustees for a valid charitable purpose, neither the creator of the trust nor his heirs or assigns have any standing in court in a proceeding to compel the proper execution of the trust; except as relators." To the same effect are Pratt v. Security Trust & Savings Bank, 15 Cal. App. 2d 630, 640 [59 P. 2d 862]; Geo. Pepperdine Foundation v. Pepperdine, 126 Cal. App. 2d 154, 161 [271 P. 2d 600].

The Gold Star pleading named the attorney general as cross-defendant, and that official filed an answer which admitted or denied various allegations and concluded with the prayer "that the Court hear and determine all the issues raised by the pleadings herein and that it enter judgment accordingly, including the awarding to this answering cross-defendant of costs of suit and such other and further relief as the Court may deem just in the premises."

A relator is a party in interest who is permitted to institute a proceeding in the name of the People or the at-

torney general when the right to sue resides solely in that official. The term is thus defined in Rawle's Third Revision of Bouvier's Law Dictionary, page 2863: "At common law, strictly speaking, no such person as a relator to an information is known, he being a creature of the statute of 9 Anne. In this country, even where no similar statute prevails, informations are allowed to be filed by private persons desirous to try their rights, in the name of the attorney-general, and these are commonly called relators." The attorney general prescribes his own rules for granting such consent and they may be entirely informal.

In People v. San Francisco, 36 Cal. 595, 605, an interested party filed a mandamus proceeding under the title of People ex rel. Ferguson. The application and notice thereof were signed by the attorney for the relator, but not by the attorney general. The court said in this connection: "Though the Attorney General did not sign the notice, he unites in the brief in support of the application, and thereby, impliedly at least, consents to the use of the name of the People." That ruling is applicable at bar. The attorney general has impliedly consented to the prosecution of the cross-complaint by Gold Star standing in the position of a relator. Not only did he do so by his pleading, but the deputy attorney general in charge of the case stated, in closing his argument below: "Upon a complete examination of this record and with the great realization of what I am about to advocate, it is my earnest conclusion that, with the view in mind to properly benefiting the beneficiaries in carrying out the trust purposes, removal of the present trustee is essential." The attorney general has also filed a respondent's brief in this court which argues: "The Findings of Fact are Fully Supported by the Evidence and Required the Re-

moval of Memorial National Home Foundation as Trustee. . . . The Trial Court Properly Removed Memorial National Home Foundation as Trustee of Charitable Assets," and concludes: "This respondent concludes that the evidence and the law clearly supports the decree and the procedure by which it was obtained. . . . This respondent concludes that this action was proper and was more than justified by the substantial evidence elicited." We hold that Gold Star's cross-complaint was properly entertained by the court, even if it were to be conceded (which we do not) that the attorney general's own complaint was not sufficient to sustain the action.

Next it is argued that the removal of Foundation as trustee stripped it of all its assets and therefore operated as a dissolution; that an action in *quo warranto* is the exclusive applicable procedure, and it cannot be pursued without compliance with section 4691, Corporations Code, which gives the corporation an opportunity to cure its derelictions by charter amendment or other corporate action.[11] It appears, however, that this section applies only to an action brought under section 4690, not strictly *quo warranto* but one "to procure a judgment dissolving the corporation and annulling, vacating, or forfeiting its corporate existence." "Apart from statutes extending the existence of, or conferring powers upon, corporations for the purpose of winding up their affairs, the dissolution

---

[11]Corp. Code, §4691: "However, if the cause of action is a matter or act which the corporation has done or omitted to do that can be corrected by amendment of its articles or by other corporate action, such suit shall not be maintained unless (a) the Attorney General, at least 30 days prior to the institution of suit, has given the corporation written notice of the matter or act done or omitted to be done, and (b) the corporation has failed, neglected, or refused to institute proceedings to correct it within the 30-day period or thereafter fails to prosecute such proceedings."

of a corporation implies the termination of its existence and its utter extinction and obliteration as an entity or body in favor of which obligations exist or accrue or upon which liabilities may be imposed." (13 Am. Jur., §1342, p. 1191.) See also Restatement of Conflict of Laws, section 157, comment a, page 227. The instant action has no such purpose; it leaves Foundation intact as a corporation, qualified to undertake and administer any new charitable trusts which do not impinge upon those whose administration has been taken from it. In re Los Angeles County Pioneer Society, *supra*, 40 Cal. 2d 852, has established the law for this state that a court of equity may remove a corporate trustee of a benevolent trust and transfer to another fiduciary the management of all property held by it for such purpose. There is no merit in the contention that *quo warranto* was the exclusive, or indeed the appropriate, remedy to be pursued at bar.

Absence of indispensable parties is urged on two grounds,—that the directors of Foundation and the United States are in that category.

As to the directors, the argument proceeds as if the action sought their removal from office, which obviously is not the case. Authorities cited to the proposition that the directors are essential parties to such an action are not in point. Although the corporation was removed as trustee of all the trust assets in the instant case, the corporation is not dissolved and the directors remain able to function as such. Title to the trust assets was vested in the trustee, not in the directors, and the judgment takes nothing from them to which they were entitled as individuals. They were neither indispensable nor necessary parties.

The United States is not an indispensable or necessary party. The contention that it is rests upon a collateral agreement made at the time the government deeded Truman Boyd Manor to Foundatoin. That was done by quitclaim deed which contained no covenants or conditions. A contemporaneous agreement was made between the United States, "represented by the Department of the Navy," and the Foundation, under date of May 27, 1953. It recites the request of Foundation for transfer of Truman Boyd Manor pursuant to the Lanham Act, also the willingness of the Administrator of the Housing and Home Finance Agency to effect the transfer "on the expressed condition that a satisfactory agreement be entered into between the Foundation and the Department of the Navy, with respect to operation of the project, its availability for occupancy by persons engaged in defense or mobilization activities and reasonable rentals." Then follows the agreement that so long as there is a defense need for the project, as determined by the Navy, Foundation will continue to operate it for housing purposes and maintain reasonable rents, that it will give preference to military and other defense personnel in filling vacancies, will consult with the naval commander prior to changing any rent schedules, and in the event of hostilities will, if requested by the Navy, make the project available for full military use. The condition mentioned was that a satisfactory agreement be made, and when the agreement under discussion was executed the condition had been performed and hence ceased to be further operative. At best, its violation could amount to a partial failure of consideration (Foundation paid $138,404.63 for the property),—partial failure which the United States might be able to capitalize in some proceeding brought for that specific purpose. But this agreement left no cognizable

interest in the property in the United States. Its rights, if any, growing out of a prospective violation of the agreement could not be affected by the judgment at bar, for the receivers and the new trustee take with full notice of the contract and become subject to all the sanctions which could be invoked against Foundation with respect to it. Under the principles announced in Bank of California v. Superior Court, 16 Cal. 2d 516, 520-524 [106 P. 2d 879], the United States cannot be held a necessary or an indispensable party to this action.

Finally, appellants argue that "[t]he trial court has in effect determined that it, rather than Congress and the Housing and Home Finance Agency, should determine who is to manage Truman Boyd Manor"; and that "[t]he contract between the United States and Memorial National Home Foundation demonstrates that the United States has not completely disposed of Truman Boyd Manor." Hence, counsel say, this judgment interferes with the power of Congress to dispose of and make all needful regulations concerning property of the United States. (U. S. Const., art. IV, §3, clause 2.) There is no merit in this contention for, as shown above, United States parted with its entire interest in Truman Boyd Manor; if perchance it has any rightful complaint as to performance of the contract with the Navy above discussed, that right is not affected by the judgment herein.

No other points concerning the judgment require discussion.

Appeal From Order Fixing Compensation of Receivers

By the judgment herein the court appointed Messrs. Roy E. Allen and George D. Lyon receivers of all the trust property "pending the appointment of a new trustee, or trustees." They qualified, took possession and in due course presented their Report and First Account Current wherein they prayed for an allowance of compensation and averred that their "joint work is reasonably and fairly worth $2,500.00 per month." Supporting testimony was given. As the court was about to rule, counsel for appellant Foundation objected to payment of any moneys to the receivers "out of the funds of Memorial National Home Foundation" on the ground of lack of jurisdiction. the reference apparently being directed to jurisdiction over the action and jurisdiction to appoint a receiver. The court made its "Order Approving, Settling and Allowing Report and First Account Current of Receivers, Fixing Compensation of Receivers, etc.," stating that "the circumstances are such that this is an appropriate case for allowance of compensation to the receivers on a salary basis, and that the fair and reasonable value of the services of the said receivers in their capacity as such receivers in this action is the sum of $2,500.00 per month, pending the further order of this court. . . . That the said receivers be and hereby are allowed, pending the further order of this court, the sum of $2,500.00 per month for their services as such receivers herein, and that out of the funds in their possession, they are authorized to disburse $1,250.00 per month to each of the said receivers, from the date of their qualification herein as such receivers, pending the further order of this court." From this order Foundation has taken appeal Number 22871.

No contention is made that the award is excessive, or that the court abused its discretion in any respect. Appellant's brief says: "The resolution of the instant appeal would seem to be governed by the disposition of the appeal by appellant from the interlocutory judgment which among other things appointed the respondent receivers"; also, "[a]s earlier stated, the resolution of this issue is ancillary to and dependent on the decision of the main appeal in No. 22766." Respondent Gold Star and respondent receivers concur in this view.

Appellant argues two points, (1) that the court had no jurisdiction over the action, hence the order appointing receivers is void and the costs of same cannot be assessed against the receivership assets but must be borne by the party which secured the void order;[12] (2) that, even if the appointment was not void, where "the party objecting to the receivership has the property restored on the merits, the general rule is that the receiver is not entitled to compensation out of the property but instead must look to the applicant for the receiver for such compensation."

Our disposition of the appeal from the judgment reveals that the court had jurisdiction over the action and hence possessed incidental jurisdiction to appoint receivers pursuant to the usages of equity (Code Civ. Proc., §564, subds. 3, 4; Bowles v. Superior Court, 44 Cal. 2d 574, 584 [283 P. 2d 704]).

The affirmance of that judgment precludes the possibility of restoration of the property to appellant upon the merits and renders any discussion of the contrary hypothesis wholly unnecessary. However, we suggest in

---

[12]Apparently the receivers were appointed on the court's own motion in order to protect the assets pending appointment of a successor trustee.

that connection that the allowance to receivers on a monthly basis was made "pending the further order of this court." Mr. Allen testified: "I do not feel that a court setting a salary is bound, after the event, to maintain that salary longer. We would like to have some idea of what we are being paid"; and counsel for the receivers say in their brief: "It should be remembered that permitting the receivers to look to the fund in the first instance and as between themselves and the parties, does not necessarily settle the ultimate incidence of liability for the receivership costs and expenses. These may be allocated against all or some of the parties in accordance with the circumstances and the purpose of bringing about a fair result. That, however, is a matter which need not—indeed, probably cannot—be reached until the receivership has been finally disposed of." We agree that affirmance of the order, phrased as it is, does not control the future action of the court upon the matter of receivers' compensation.

Multiplicity of Appeals

The notice of appeal from the judgment, and the whole thereof, adds the words "including the Minute Order of the above entitled Court entered on October 24, 1956, signed on the 7th day of December, 1956 and entitled 'Interlocutory Judgment' and all preliminary orders and rulings of said Court in the above entitled action to the Supreme Court of the State of California." That minute order directs the "Attorney General to prepare the Interlocutory Judgment and Restraining Order"; hence the minute order is not appealable. (Herrscher v. Herrscher, 41 Cal. 2d 300, 304 [259 P. 2d 901].) The other matters mentioned in the omnibus clause of the notice are not appealable.

The notice of appeal from the order allowing compensation to the receivers specifies both the formal order and the minute order which preceded it. That appeal was heretofore dismissed by this court so far as it relates to the minute order.

The judgment and the order approving, settling and allowing report and first account current of receivers, fixing compensation of receivers, etc., are affirmed. All other appeals are dismissed.

Fox, *P. J.*, and Herndon, *J.*, concurred.

SUBJECT INDEX

PAGE

Opinions below 1

Questions presented 2

Statement 4

Argument 19

I.

There is no important federal question involved 19

Conclusion 31

Appendix:

Exhibit 1. Portion of respondent's brief in District Court of Appeal which discusses the evidence ..... App. p. 1

TABLE OF AUTHORITIES CITED

Cases	PAGE
Assets Corporation v. Perrin Properties, 48 Cal. App. 2d 220	25
Baptist Association v. Hart's Executors, 17 U. S. (4 Wheat.) 1, 4 L. Ed. 499	28
Burke v. Southern Pacific Railroad Company, 234 U. S. 669, 34 S. Ct. 907, 58 L. Ed. 1527	26
Capron v. Van Horn, 201 Cal. 486	26, 29
Daniels v. Wagner, 237 U. S. 547, 35 S. Ct. 740, 59 L. Ed. 1102	29
England v. Winslow, 196 Cal. 260	25
Gibson v. Chouteau, 13 Wall. (80 U. S.) 92, 20 L. Ed. 534	26
Great Northern R. Co. v. Donaldson, 246 U. S. 121, 38 S. Ct. 230, 62 L. Ed. 616	20
Henderson's Estate, In re, 17 Cal. 2d 853	23
Johnson v. Towsley, 13 Wall. (80 U. S.) 72, 20 L. Ed. 485	26
Late Corporation of Latter-Day Saints v. United States, 136 U. S. 1, 10 S. Ct. 792, 34 L. Ed. 478	28
Los Angeles County Pioneer Society, In re, 40 Cal. 2d 852	25
Magnum Import v. Coty, 262 U. S. 159, 43 S. Ct. 531, 67 L. Ed. 922	24
May v. May, 167 U. S. 310, 17 S. Ct. 824, 42 L. Ed. 179	25
Meinhard v. Salmon, 249 N. Y. 458, 164 N. E. 545	25
Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U. S. 287, 61 S. Ct. 552, 85 L. Ed. 836	20
Mt. Vernon Mortgage Corporation v. United States, 236 F. 2d 724	28
Norton Company v. Dept. of Revenue, 340 U. S. 534, 71 S. Ct. 377, 95 L. Ed. 517	20
Overell v. Overell, 78 Cal. App. 251	25
People v. Cogswell, 113 Cal. 129	25

PAGE

Rice v. Sioux City Memorial Park Cemetery, 349 U. S. 70, 75 S. Ct. 614, 99 L. Ed. 897 24

Sunday School Union of A. M. E. Church v. Walden, 121 F. 2d 719 25

United States v. Ahtanum Irrigation District, 236 F. 2d 321 28

United States v. Minnesota, 270 U. S. 181, 46 S. Ct. 298, 70 L. Ed. 539 28

Upham, Estate of, 127 Cal. 90 23

Widows and Orphans Home of Odd Fellows v. Commonwealth, 126 Ky. 386, 103 S. W. 354 23

Wilcox v. Jackson, 13 Pet. (38 U. S.) 498, 10 L. Ed. 264 25

SENATE REPORT

Report of the Senate Committee (1950 Code Cong. Service, pp. 2021, 2056) 30

STATUTES

California Civil Code, Sec. 2228 25

California Civil Code, Sec. 2232 25

California Civil Code, Sec. 2233 25

California Civil Code, Sec. 2234 25

California Civil Code, Sec. 2258 25

California Corporations Code, Sec. 9505 ..... 4, 27

United States Code Annotated, Title 42, Sec. 1581(b) 26

TEXTBOOKS

Bogert, Trusts and Trustees, Sec. 543 25

Bogert, Trusts and Trustees, Sec. 961 25

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 575

MEMORIAL NATIONAL HOME FOUNDATION, a non-profit charitable corporation,

Petitioner,

vs.

EDMUND G. BROWN, Attorney General of the State of California, and AMERICAN GOLD STAR MOTHERS, INC., a non-profit charitable corporation,

Respondents.

On Petition for Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California, Division Two.

Brief for Respondent American Gold Star Mothers, Inc. in Opposition.

Opinions Below.

The Findings of Fact and Conclusions of Law and the Judgment of the Los Angeles Superior Court are attached to the brief of the California Attorney General. (Br. for Resp. Atty. Gen., Exs. 1 and 2.) The opinion on the merits of the California District Court of Appeal with which we are here concerned is reported at 162 A. C. A. 550, 162 Cal. App. 2d ....., 329 P. 2d 118. (Br. for Resp. Atty. Gen., Ex. 3; Pet. Ex. "D.")

Other opinions of the California District Court of Appeal are attached to the Petition, but are not pertinent to the merits of the questions urged by Petitioner.

Said opinions are reported at 158 Cal. App. 2d 448, 322 P. 2d 600 (holding the judgment of the trial court to be "final" although denominated "interlocutory judgment") and at 163 A. C. A. 55, 163 Cal. App. 2d ..... (modifying opinion to strike a sentence, and denying petition for rehearing). (Pet., Exs. "C" and "E.")

Questions Presented

Petitioners' "Questions Presented for Review," and the factual statements preliminary thereto, omit nearly every essential fact upon which the judgment and appellate discisions were based, and assert as fact, Petitioner's contentions which are contrary to the findings of the California courts.

For example: (1) American Gold Star Mothers, Inc., is not a "private" corporation but is a District of Columbia charitable and patriotic corporation having nationwide membership. (2) Petitioner did not amend its articles "in order to qualify" under the Lanham Act, or "at the instance" of any Federal agency. The first amendments whereby Petitioner's president and dominant figure, Eleanor D. Boyd, sought to destroy the trust for American Gold Star Mothers members were secretly made two years before application for the Truman Boyd Manor transfer. The amendments were concealed from the members of American Gold Star Mothers who were at all times led to believe Petitioner was their corporation, separate for tax and administrative purposes only. The Federal officials also believed that Petitioner was a subsidiary organized to hold property for the benefit of needy Gold-

Star members. (3) The organization of American Gold Star Mothers, Inc., never protested the transfer of Truman Boyd Manor; in fact the transfer was approved only because American Gold Star Mothers, Inc., had endorsed the transfer to Petitioner which the Federal government believed was an integral part of and controlled by Gold Star. (4) The judgment removed Petitioner as trustee of all its assets, not just Truman Boyd Manor, for numerous and flagrant violations of its fiduciary obligations.

Petitioner's "main" question asks whether a State Court may change the beneficiaries of a trust created by Congress. The state court did not change the beneficiaries, but restored the trust properties for the benefit of the needy members of Gold Star, for whose benefit all donors, including the United States, gave assets.

Subsidiary question 1 inquires whether the State court may collaterally attack the deed to Petitioner from the United States. But no collateral attack upon a deed is involved in removing a charitable trustee for violations of its obligations as a charitable trustee. Subsidiary question 2 asks whether the determination of the Federal agency that petitioner was a proper transferee is binding on the State court. This is a false issue. No one has denied that Petitioner was the intended transferee of Federal property, but it took in trust and was removed for breaches of that trust. Subsidiary question 3 queries whether the United States is an indispensable party by reason of (a) the trusts it had imposed upon the property under the Lanham Act and (b) the collateral agreement it had entered into with Petitioner at the time of the transfer. As will be shown, the transfer by the United States was by quitclaim deed in favor of Petitioner, "its successors and assigns." The United States reserved no interest in the

property and intended no supervision after transfer. As to the collateral agreement (an agreement relating to affording priority in housing, between the United States Navy and Petitioner), as the District Court of Appeal pointed out, that agreement was unaffected by the judgment.

The questions raised by Petitioner might more correctly be phrased as follows:

1. Does a non-profit corporation for charitable purposes, created and organized under California law and holding all its properties in California, have immunity from statutory and common law supervision by the California Attorney General and the California Courts with respect to mismanagement, hostility, abuses, and breaches of a charitable trust, etc., merely because a portion of its assets were originally acquired by quitclaim deed from the United States?

2. Is the United States a necessary or indispensable party in an action by a State Attorney General to enforce charitable trusts, merely because the action involves land which the United States at one time owned but which it conveyed by unconditional quitclaim deed to a corporation, its successors and assigns, and over which the United States retained no supervision or control?

Statement.

This was an action commenced by the California Attorney General as the law enforcement officer of the State of California to declare and enforce charitable trusts pursuant to his con. on law and statutory powers to supervise charitable trusts and protect the public interest therein. Section 9505 of the California Corporations Code provides

that "a nonprofit corporation which holds property subject to any public or charitable trust is subject at all times to examination by the Attorney General, on behalf of the State" and, in case of failure or departure from its purposes, "the Attorney General shall institute in the name of the State, the proceedings necessary to correct the noncompliance or departure."

At the trial, the Attorney General joined the respondent American Gold Star Mothers, Inc., in seeking the removal of Petitioner as charitable trustee, and Petitioner was removed as trustee for abuse and abandonment of charitable trusts, for hostility towards the beneficiaries detrimental to the trust and beneficiaries, for failure to disclose material facts, for violations of the duties of a trustee and for mismanagement and improper investments. [Clk. Tr. 193-202.]

American Gold Star Mothers, Inc., hereinafter called "Gold Star," is a District of Columbia charitable and patriotic corporation, which, as Mrs. Boyd wrote, "has been known for more than twenty years as the National Organization for Gold Star Mothers."[1] Its purposes and primary efforts include extending needed assistance to all Gold Star Mothers (mothers whose sons or daughters were killed in the service of the United States in World War I, World War II or Korea) and rendering assistance at Veterans Hospitals. It has approximately 550 chapters throughout the nation and over 20,000 members, together with the fathers who are associate members, and is open to all Gold Star Mothers. Annual dues are $3.00. Petitioner, Memorial National Home Foundation, is a California corporation organized as a non-profit corporation

---

[1]Rep. Tr. 1356.

for charitable purposes, and owning property only in the State of California; it has no membership excepting its board of directors consisting at various times of 5 to 8 members[2] who, as the trial court found, have at all times been under the domination and control of Eleanor D. Boyd, a party to the proceedings below. [Clk. Tr. 200-201.]

Eleanor D. Boyd, Petitioner, president, was president of American Gold Star Mothers, Inc., from June, 1946 through June, 1947, and from June, 1948 through June, 1952. At the national convention of Gold Star in June, 1947, Mrs. Boyd proposed that there be a home for needy members of Gold Star, as a "No. 1 objective of the organization," saying that the corporation could be formed "within our present organization . . . under the direction of American Gold Star Mothers, Inc., which is a non-profit organization." Mrs. Boyd proposed and the convention delegates adopted a resolution whereby she was authorized and directed to form " a national home for the distressed and needy members of American Gold Star Mothers, Inc., which home shall at all times be under the auspices of the American Gold Star Mothers, Inc."[3]

Immediately after the 1947 Gold Star convention, Mrs. Boyd organized a California corporation which, while a violation of the convention resolution, gave evidence of an attempt to place control of the corporation in its parent Gold Star for its membership. The corporation as formed by Mrs. Boyd had no members excepting the board of directors, all of whom were originally and at all times thereafter, selected and controlled by her, and at all times

---

[2]Cross-Compl. Ex. C-1; Rep. Tr. 183-184.

[3]Rep. Tr. 161-163; 245-246; 167; 247-248.

Mrs. Boyd has been president and chairman of the board of Foundation.[4] The original name of the corporation was American Gold Star Mothers, Incorporated, Memorial National Home Foundation; a majority of the directors were required to be members in good standing of Gold Star; and the corporation's purpose was to establish a home for the benefit of needy members of Gold Star. The original funds received by Foundation were donated at that 1947 Gold Star Convention. Thus Foundation began its life under the auspices of Gold Star and as its subsidiary.[5]

The plans for the incorporation of Foundation, although laid prior to the 1947 Gold Star Convention, were not divulged to Gold Star, and when Mrs. Boyd announced in a bulletin to the membership and chapters in July, 1947, that a corporation was already in existence there were protests by some of the Gold Star executive board. Mrs. Boyd dismissed the protests as those of a minority and immediately assured the membership by a series of bulletins, that Foundation was organized separately for tax purposes, but existed solely to serve the membership of Gold Star.[6]

In response to demands by the then Gold Star president and her attorney that Mrs. Boyd restore the Foundation to Gold Star, she announced in a bulletin to the chapters and members that Foundation would remain in existence "until action taken by legal delegates in a legally called annual National Convention of the American Gold Star

---

[4]Rep. Tr. 183-185; 1410-1411; 2832-2833; 2836-2837; 2981; 3253; 3600-3601; 3591; 3361.

[5]Rep. Tr. 194-195; Cross-Compl. Ex. BBBB-14.

[6]Cross-Compl. Exs. D, R, and S.

Mothers, Inc., decrees otherwise." In the same bulletin she stated:

> "The directors of the Memorial National Home Foundation have a dual obligation. Their responsibility lies not only in providing a National Home for distressed and needy members of American Gold Star Mothers, Inc., but they must conduct their affairs in such a way that no donor to the Memorial National Home Foundation shall ever question the singleness of purpose for which the funds they gave are applied. The National President and National Board of American Gold Star Mothers, Inc., have plenty to do to establish new chapters and carry on other work of the parent organization."[7]

One month after that bulletin was sent out, in January, 1948, without consultation with or notice to Gold Star, Mrs. Boyd caused the articles of incorporation of Foundation to be drastically amended. The name was changed to Memorial National Home Foundation. The requirement that the majority of directors be members of Gold Star was stricken. The purpose clause was changed to describe the beneficiaries as "Gold Star Mothers (mothers whose children were killed in the service of United States of America)," instead of members of Gold Star.[8] Thereafter Mrs. Boyd concealed and misrepresented those amendments. In a bulletin sent to the chapters and members of Gold Star in March of 1948, Mrs. Boyd referred to Foundation as "your organization" which is "controlled by director vote of Gold Star Mothers in good standing who belong to chapters of American Gold Star Mothers,

---

[7]Cross-Compl. Ex. S.

[8]Cross-Compl. Ex. BBBB-15.

Inc."[9] Mrs. Boyd testified that she never did mention these changes in the articles because she did not feel it was a matter of interest to the membership.[10]

At the June, 1948 convention of Gold Star, Mrs. Boyd was once more elected president of Gold Star and repeated the theme that "controlling vote has always been in the hands of Gold Star Mothers" and would continue to be. Her only reference to the January, 1948, amendments was a statement that she had dropped the "Inc." from the name of the Foundation, concealing the elimination of the words American Gold Star Mothers and the changes in directorship and purpose. At that convention a resolution was adopted that the Gold Star delegates desired that the Foundation be an "integral part of our organization."[11] Mrs. Boyd secretly determined to do nothing about the resolution because it did not pass by a two-thirds vote, although there was no such requirement.[12] These amendments to the articles were never disclosed to the membership by Foundation or Mrs. Boyd, and were not discovered by members for years. In 1952 and 1953 the members did commence to learn of the amendments. When told that a Mr. Geisler had a photostatic copy of the charter amendments, Mrs. Boyd said: "You had no business to go down there. That isn't any of your business at all. That is the business of the Memorial National Home Foundation." When Mr. Geisler replied that he thought it the business of all members of Gold Star, she further said: "Well, I don't interfere in your business, and I

---

[9]Cross-Compl. Ex. U.

[10]Rep. Tr. 1657-1658.

[11]Cross-Compl. Ex. W.

[12]Rep. Tr. 611-612; 597: 590; 1631-1632; 1770-1772; 1125-1126; 2445.

don't think you should interfere in mine, and this is my business." On another occasion when Mrs. Geisler referred to having photostatic copies of the amendments the following colloquy occurred: Mrs. Boyd: "You misrepresented or you could not have gotten them." Mrs. Geisler: "I did not misrepresent, the record books are open to all who wish to see them." Mrs. Boyd: "You had to swear you were entitled to them; you had to tell a lie to get them; you could not have gotten them otherwise."[13]

Following the 1948 convention and until 1953 Mrs. Boyd urged the members on to ever greater fund raising efforts on behalf of our home." Repeated assurances were given that the home belong to the members of Gold Star but had to be a separate corporation for tax and administrative purposes. Mrs. Boyd conducted intensive solicitation of funds for Foundation in the official newspaper of Gold Star, which she completely controlled. The membership and executive board of Gold Star always understood the home to be for the members, and were so told in the newspaper, and on numerous occasions when Mrs. Boyd spoke.[14] From 1948 to 1953 the chapters and members of Gold Star purchased plaques, conducted paper drives, purchased oil portraits, sold concert tickets, held benefits, had annual bazaars, conducted special drives to raise money within the chapter (known as the "$500 Silver Tea Set Drive"), held canasta parties, held bridge parties, carried on rummage sales, had teas, luncheons,

---

[13]Rep. Tr. 2453-2456; 2037-2042; 2123.

[14]Rep. Tr. 2145-2147; 2202-2203; 2437-2449; 2471; 2270; 2272 2285; 2024-2040; 1847-1848; 1859-1869; 2008; 2145-2159; 2272; 2306-2307; 2315-2318; 2382-2386; 2437-2441; 641-667; 777-807; 859-866; Cross-Compl. Ex. QQ.

musicals, fashion shows, conducted raffles, made special contributions on the anniversary of their deceased son's birthday, on the father's birthdays, and on the National President's birthday, held auctions, raffles, raised special collections at chapter and department meetings, budgeted annually for the home, sold soap, asked for special donations in lieu of dues from the associate members (fathers), instituted a "dollar a year" plan whereby each chapter was to pledge a dollar a year per member for the Home, gave furniture and linen, conducted theater parties, held home cooked food sales, donated special dedication sponsorship at Ojai—all to raise funds for Foundation directly from the membership or from projects carried out by the membership.[18]

As a result of these activities, between 1947 and May, 1953, the Foundation collected from Gold Star members' donations and activities, and similar sources, a total of $73,577.12 for a home for needy Gold Star members. The testimony of Gold Star members, including certain members who were at one time directors of Foundation, who had participated in the fund raising efforts and had read and heard Mrs. Boyd's representations, left no doubt that the membership believed at all times that Mrs. Boyd was striving to establish, and they were working for, "our home." (See references to record *supra*, footnote 14.)

With respect to the acquisition of property from the Federal government, the District Court of Appeal summarized the evidence as follows:

> "During World War II the United States Government had established at Long Beach a temporary project for defense workers and armed forces per-

[18]Cross-Compl. Ex. FFF-1 through FFF-49.

sonnel consisting of about 90 acres of land with some 1,000 family dwelling units on it. It had been named Truman Boyd Manor in honor of Mrs. Boyd's son who had been killed in the service. As early as August, 1947, Mrs. Boyd began a campaign to induce the government to relinquish this project to Foundation as a home for Gold Star Mothers, under the authority of the Lanham Act (42 U. S. C. A. §1581 (b)). In these activities she contacted senators, representatives, Public Housing Administration officials and others having authority concerning the subject. She now claims to have acted solely as president of Foundation, but the record she made at the time refutes this contention. She told various senators that 'Memorial National Home Foundation is incorporated to take care of the needy members of the American Gold Star Mothers, Inc., as well as other needy Gold Star Mothers and fathers.

" 'The American Gold Star Mothers, Inc. is a National organization qualified in the District of Columbia after World War I. The Memorial National Home Foundation was incorporated to take care of the needy Gold Star Mothers and Fathers on a National scale.' Congressman Doyle of Long Beach was quoted in one of the letters in evidence as stating that 'he participated with Mrs. Boyd in the Congressional and Navy Department discussions at the time the enabling legislation was passed, and that it was assumed on all sides that this was a charitable project of the American Gold Star Mothers, Inc.' There was much correspondence with government officials, most of which was upon the letterhead of Gold Star and signed by Mrs. Boyd as president of that organization and chairman of the board of Foundation. She introduced herself and was introduced to various officials as president of Gold Star. Finally, in 1950, an amend-

ment was incorporated in the Lanham Act which was intended and understood to apply to Gold Star, viz: '[W]here the Administrator determines that the housing involved is urgently needed by parents of persons who served in the armed forces during World War II and died of service-connected illness or injury.'[5]

---

[5]"This was the language of the statute at the time of relinquishment to Foundation was approved on June 7, 1950, 'for the purposes of acquiring and operating a Home for the parents of persons who served in the Armed Forces during World War II and who died of service connected illness or injury.'

"By amendment of October 26, 1951, the words 'during World War II' were stricken and the following phrase was substituted, 'at any time on or after September 16, 1940, and prior to July 26, 1947, or on or after June 27, 1950, and prior to such date thereafter as shall be determined by the President.' (65 Stat. 648, ch. 577, §2.)"

"When formal application for relinquishment was made it was presented in the name of Foundation. However, it included a copy of a resolution adopted at the Gold Star Convention of 1949, reading: RESOLVED that the American Gold Star Mothers, Inc. authorize the Chairman of Memorial National Home Foundation to proceed to acquire the emergency Housing Project . . . that project being ninety (90) acres which assures us of plenty of room to take care of the mothers and fathers who need assistance; to be known as the Memorial National Home Foundation property for Gold Star mothers and fathers throughout the nation."[6] Also included was a finan-

---

[6]"The corporate name of Gold Star did not include 'Inc.' until the amendment of November, 1950.' It is a fair inference that the phrase 'Gold Star Mothers' had a generally accepted secondary meaning which signified respondent corporation and its members."

cial statement of Gold Star written upon its own letterhead. This application caused surprise and ques-

tioning within the Housing Administration (which had jurisdiction over this matter) and it required that a relinquishment of the property to Foundation be approved in writing by Gold Star. When this was received, and the executive board of Gold Star had appeared in support of the application, same was approved, for the Housing Administration then concluded that 'Memorial National Home Foundation was a corporation that had been established to take title to the property as an operating organization for' American Gold Star Mothers Inc. The court found, upon adequate evidence, 'that the Housing and Home Finance Agency, Public Housing Administration, did believe that the said Truman Boyd Manor was being conveyed to an organization which was an integral part of and controlled by the defendant, American Gold Star Mothers, Inc.' Before the matter could be accomplished the Korean conflict arose and a freeze was placed on all such relinquishments.

"Early in 1953 the subject of lifting the freeze on this property was considered and the question again arose whether Foundation would be a proper grantee. Mrs. Boyd then furnished the authorities a copy of a resolution adopted at the Gold Star Convention of 1952, to the effect 'that the National Executive Board of the American Gold Star Mothers, Inc., uphold and recommend the continuance of the policy of the Memorial National Home Foundation, also, that in accord therewith each chapter shall proceed to annually elect a member to the advisory committee of the Memorial National Home Foundation. . . .' Careful scrutiny of this resolution shows that it related only to the policy of the Foundation to have members of Gold Star upon its advisory committee. But the resolution satisfied the government officials, the freeze

was lifted and the property deeded to Foundation on May 29, 1953, for a price of $138,404.63[7] with a down payment of $944.66. The entire balance was paid in the ensuing year out of current revenues from the property, which grosses approximately $500,000 a year. An appraisal made for Foundation showed a value of $2,698,143.15."

[7]"This represented the cost of the land to the Government of $133,182.49, plus a payment in lieu of taxes of $4,277.48 and the sum of $944.66 for accounts receivable."

Petitioner has annexed to the Petition a portion of its brief in the California District Court of Appeal. [Pet., Ex. G.] We attach as Exhibit "1" to this brief the portion of our brief in the District Court of Appeal, which discusses the evidence.

Upon acquiring Truman Boyd Manor in May, 1953, Mrs. Boyd issued a press release in which openly repudiated the trust for Gold Star and she disclaimed any connection between Foundation and Gold Star "except that Gold Star Mothers have been invited to name an advisory board." Never before had she made such a statement. The membership thereby became aware of the attempted severance of the Foundation from its parent and at the June, 1953, Gold Star convention, a resolution was adopted to bring the Home under the operation of Gold Star to be used for the benefit of the members.[16]

To quell questioning or criticism of her regime, Mrs. Boyd used litigation and threats of litigation as her stock-in-trade, filing or causing to be filed a number of actions against Gold Star and an organization known as National Gold Star Mothers formed by members dissatisfied with Mrs. Boyd's domination. Members of that organization

[16]Rep. Tr. 1555-1564; 2205; 2481-2482.

were vilified in the Gold Star paper by Mrs. Boyd who referred to them as "Fifth Columnists," "undesirables" and "Quislings."[17]

In 1952 and again in 1953, she filed actions (later dismissed) against Gold Star;[18] opponents of her policies, described as a "subversive element" were attacked or expelled.[19] When questioned about the Foundation at a Gold Star convention, Mrs. Boyd had replied: "We are directed to take care of Memorial National Home Foundation and not ask so many questions that are not necessary to be told to you at this time." The records of the organization are interspersed with Mrs. Boyd's comments such as "Just leave it to the Directors of the Foundation." The evidence supporting the finding of hostility and antagonism on the part of petitioners toward the potential beneficiaries of the trust was overwhelming, and best measures Petitioner's claim that it is only trying to benefit all Gold Star parents.

With respect to management, there was an abundance of evidence of gross mismanagement resulting in substantial financial loss and a failure to provide any home. For years the members were led to believe that a home was imminent. Applications into the home, accepted only from members of Gold Star, were published monthly in the Gold Star paper from 1950 on. The Ojai property, purchased in a hurry in order to satisfy the Gold Star members that something was being done, has never had a permanent resident and, because of zoning restrictions and a water shortage, could not be utilized as a home, and Foundation

---

[17]Rep. Tr. 1287-1289; 2611-2614; 1290-1293; 1320-1324; 1545-1553.

[18]Rep. Tr. 3046-3047; 981-982.

[19]Rep. Tr. 1015-1018; 1394; 1802-1808; 1249-1257.

has never had a State license to care for needy persons. That property, purchased for $55,000.00 and on which Foundation spent over $20,000.00 in improvements, operated for practical purposes at a dead loss and cost the trust approximately $40,000.00 from its acquisition in 1951 to May of 1956.[20]

In September of 1953, after the June, 1953, convention of Gold Star, for the first time the directors of Foundation determined to segregate the assets into three separate trusts according to the dates of the respective changes in the articles of incorporation, and to put a sign on the door of a small bedroom at Ojai showing that room to be for the benefit of members of Gold Star; thus, the entire trust for the specific benefit of members of Gold Star was supposed to be represented by one bedroom which had a plaque on the door, "The American Gold Star Mothers, Inc.," together with the right to use a service area in common with others. This was based on a segregation whereby the specific trust for Gold Star members was sought to be cut off as of January, 1948, when the first secret amendment of articles was made and when the Foundation had collected only $2,170.08.[21]

Since the acquisition of Truman Boyd Manor, Mrs. Boyd has acted as general manager, but demonstrated at the trial an ignorance of most of the details of Truman Boyd Manor operations and future plans. It appears that there were between 20 and 30 Gold Star parents at Truman Boyd Manor at the time of trial, occupying about 20

---

[20]Rep. Tr. 2284-2285; 2470-2471; 2044-2045; 832; 3290; 849; 1380-1383; 1387-1388; 860; 2321-2323; 1641-1646; 2354-2364; 2369-2372; 1594; 1612-1613; 1676; 1668-1669; 1559; 1785; 3328; 333; 2372; 1084.

[21]Rep. Tr. 1651-1652; 1077-1081.

of the 994 rental units. The Gold Star parents paid substantially the same rent as other tenants.[22]

A Long Beach ordinance permits temporary housing only until 1961. To make the housing permanent would require a million dollars, but despite a half million dollar annual gross income, no reserve fund for Truman Boyd Manor had been set up nor any plans developed either to renovate or to construct a home there. Preliminary drawings presented to the City Council were rejected as being directly in the path of a projected freeway, as were plans for a duplex and a hospital.[23] The first project was to be a hospital which was to be an expansion of the clinic operated on the premises by Mrs. Boyd's husband, Dr. Walter Boyd, also a director of Foundation. Mrs. Boyd, when asked about the clinic, was unable to testify as to any of the business or financial arrangements between Dr. Boyd and Foundation, what rent he paid or whether it had ever been changed.[24]

The directors of Foundation have been selected and chosen by Mrs. Boyd and the policies and plans largely left to Dr. and Mrs. Boyd. As the trial court found, the Foundation and its board are under the dominant control of Mrs. Boyd who lacks experience and is unduly influenced by passion and prejudice. Certain other members of the board lack the time necessary to devote to the trusts and certain other members of the board chosen by Mrs. Boyd for personal reasons are mere figureheads. All of the board delegate their authority to Mrs. Boyd and

---

[22]Rep. Tr. 1584-1585; 1148-1149; 1573-1577; 1708; 1776.

[23]Rep. Tr. 3592; 3315; Pltf. Ex. XVI, Ex. C thereto; 3457-3458; 3467-3469; 1610-1612; 3589-3590; 1739-1740.

[24]Rep. Tr. 3340; 1051-1058; 3477; 3442-3444; 3583-3584; 3377.

permit her to dominate and control the actions of the board of directors.[25]

On the basis of the evidence, the highlights of which have been here stated, the trial court removed Petitioner as trustee for its violations of fiduciary obligations and declared that its assets were held in trust for needy members of Gold Star.

ARGUMENT.

I.

There Is No Important Federal Question Involved.

This action was filed by the California Attorney General, as representative of the State, to declare and enforce charitable trusts, in pursuance of his statutory and common law duty to superintend charitable trusts. After a trial of many weeks in which testimony occupying over 4,000 pages of record was given, and thousands of pages of documentary evidence received, the trial court rendered extensive findings of fact and a judgment removing Petitioner as charitable trustee for failure to disclose material facts, for abuse and abandonment of charitable trusts, for hostility toward the beneficiaries, for mismanagement and improper investments. Three judges of the California District Court of Appeal and seven judges of the California Supreme Court, unanimous in each instance, have rejected the contentions of Petitioner and upheld the findings of the trial court based upon the mass of evidence.

The assertions at various points in the petition that the trial court and the appellate court ignored the "uncontra-

---

[25]Rep. Tr. 1486-1487; 1497; 1501; 1409-1410; 1411-1465; 3595-3608; 3353-3355; 3378-3379; 2826-2845; 2823; 3268-3271; 3583-3584.

dicted" evidence is simply not true. Each finding and the judgment were amply supported by substantial evidence. Petitioner complains that the District Court of Appeal affirmed the judgment "by applying the California rule that on appeal only evidence favorable to respondent would be considered." (Petition, p. 14.) Of course the California appellate court applied the rule that the evidence and inferences should be considered most favorably to respondents. All conflicts have been resolved and in each stage against Petitioner. What Petitioner is asking is what this Court has consistently refused to do: "re-examine, as a court of first instance, findings of fact supported by substantial evidence." (*Norton Company v. Dep't of Revenue,* 340 U. S. 534, 538, 71 S. Ct. 377, 95 L. Ed. 517; *Milk Wagon Drivers Union v. Meadowmoor Dairies,* 312 U. S. 287, 294, 61 S. Ct. 552, 85 L. Ed. 836; *Great Northern R. Co. v. Donaldson,* 246 U. S. 121, 123-124, 38 S. Ct. 230, 62 L. Ed. 616.) This is not a basis for certiorari.

Furthermore, there is nothing of nation-wide significance in this case. No Federal statute was invalidated, nor is there any claim that there is a conflict in the circuit courts or any courts regarding the particular statutory clause upon which Petitioner bases its claim of a substantial Federal question. The nature of the proceedings below was that of the California Attorney General and California courts supervising a California charitable corporation guilty of numerous wrong-doings. This is simply another case where a provision of a Federal statute, and Federal agency action pursuant to it, becomes pertinent to an aspect of involved State court proceedings, without the statute being challenged in any way. The conclusion of the trial court and the District Court of Appeal that the

particular clause incorporated in the Lanham Act in 1950 "was intended and understood to apply to Gold Star" was a factual determination amply supported, and nothing in the language of the Lanham Act would prohibit a transfer for the benefit of the needy members of the nationwide group of Gold Star parents.

Petitioner asserts, in the face of a plethora of evidence to the contrary, that the Federal government required the amendments to its articles before deeding the property to it. It is asserted that "Petitioner had amended its articles at the suggestion of the United States to qualify under the Lanham Act . . . ." (Petition, p. 8), that "at the instance of the Federal Agency administering that act, Petitioner amended its articles to include as its beneficiaries all parents of deceased service personnel regardless of membership in any private organization" (Petition, p. 3); and that "at the suggestion of the responsible Federal officials administering the act, Petitioner amended its articles to include as its beneficiaries all parents of deceased war service personnel without regard to membership in any private organization such as Gold Star." (Petition, pp. 5-6.)

Not only were the evidence and findings to the contrary, but the only reference to the record relied upon by Petitioner [Rep. Tr. 2748, lines 5-23] shows that the Public Housing Administration official whose testimony is cited testified merely that he examined the articles and was not satisfied that there was a clear obligation to house Gold Star parents "irrespective of race, color, or creed, and we asked that there be an amendment to the by-laws to make that clear." The concern was not that the beneficiaries should not be members of a membership organization but that the by-laws should clearly provide that there be no discrimination because of race, color or creed.

From the statement above, it is shown that the secret amendments to Petitioner's articles were first made, not in 1950, when Petitioner applied for transfer of Truman Boyd Manor, but in 1948; that the trial court and District Court of Appeal found that the purpose of the amendments was an attempted *ex parte* divorce whereby Mrs. Boyd sought to put the considerable assets under the control of the non-membership corporation which she controlled, while obtaining assets on the basis that a home was being established for needy members of Gold Star; and that Congress and the housing officials were caused to believe that Petitioner was a subsidiary set up by Gold Star for the purpose of acquiring property for a home for Gold Star.

Thus, there is no merit to Petitioner's argument that the California courts failed to follow uncontradicted facts determined by the Federal administrators. The contention rests on alleged facts which do not find support in the record, or where, at best, conflicts in the evidence were resolved against Petitioner.

The contention that construction of an Act by the Federal Agency charged with its administration is entitled to great weight undoubtedly states a correct principle, but it is a principle which has no application here, where there was testimony that the transfer was approved to Petitioner on the basis that it was "a corporation that had been established to take title to the property as an operating organization for Gold Star."

Petitioner also assumes erroneously that a trust to provide a home for needy and destitute members of Gold Star would not be a charity, and the repeated reference to Gold Star as a "private corporation" to be contrasted with Petitioner as a public charitable corporation, is de-

signed to foster that notion. Yet the courts have uniformly upheld as charitable, such trusts as those for the benefit of aged or needy members of Order of the Eastern Star (*In re Henderson's Estate*, 17 Cal. 2d 853), for orphan children of Good Templars, (*Estate of Upham*, 127 Cal. 90), and for widows and orphans of Odd Fellows, (*Widows and Orphans Home of Odd Fellows v. Commonwealth*, 126 Ky. 386, 103 S. W. 354). And it may be assumed that Congress was familiar with that principle.

Whether it is nobler to serve needy members of American Gold Star Mothers, Inc., or all Gold Star Parents, is a false and irrelevant issue, a pious pretension whereby Petitioner has sought to divert attention from its abuses of the trust.[26] As the District Court of Appeal said:

> "This raises the important question of the case. Did Foundation, under the dominating influence of Mrs. Boyd, acquire property and money dedicated to the relief of members of Gold Star and attempt to divert it to uses which defeat, at least partially, the trust for the benefit of members of Gold Star? . . . The story is long, but the result seems clear—that Foun-

---

[26]Implied in the argument that the judgment effects "exclusion of the great majority of otherwise qualified parents" is the assumption that Petitioner was well qualified to and would accomplish proper charitable trust purposes. The record of its activities belies any such assumption. For example, for years the membership of Gold Star had been led by promises and plans to expect that a home for needy members was imminent. No home ever came into existence and to the date of filing of this action in 1954 the entire charitable aid dispensed by Petitioner amounted to $1,629.59. [Rep. Tr. 3696-3697.] To argue that Petitioner represents all Gold Star parents, to be contrasted presumably with the 20,000 members of Gold Star and their husbands, ignores the fact that from 1947 on Petitioner made promises which were either impossible of fulfillment at the time made, or if possible of fulfillment, were thereafter disregarded and ignored.

dation did acquire property (cash and other donations and grants) to be held in trust for members of Gold Star, and having done so, diverted them to uses divergent from and partially destructive of those of Gold Star, and also excluded Gold Star from any voice in administration of the trust (162 A. C. A. 550, 556).

The statutory provision involved was unique legislation involving, as the evidence shows, one and only one housing project in Long Beach, California, whereby Congress and the Housing Administrators sought to make provision for needy and destitute members of Gold Star. As the evidence relating to Congressional intent and the testimony and correspondence of Housing officials shows, Truman Boyd Manor was the property and American Gold Star Mothers the organizational beneficiary in the enactment and administrative transfer. The case cannot and will not rise again, despite Petitioner's claim that the decision below "could shake foundations of all titles derived from the United States under analogous circumstances." The fact is that Petitioner cannot point to a single analogous circumstance, since this was unique legislation directed at a unique problem.

There is here no federal question of public importance presenting "special and important reasons" for granting certiorari; it is rather a controversy of "isolated significance" over particular legislation of no general public interest. (*Rice v. Sioux City Memorial Park Cemetery*, 349 U. S. 70, 74, 75 S. Ct. 614, 99 L. Ed. 897; *Magnum Import v. Coty*, 262 U. S. 159, 163, 43 S. Ct. 531, 67 L. Ed. 922.)

The removal of Petitioner was not on a federal ground, but on ample non-federal grounds; for violation of in-

numerable fiduciary obligations embodied in equity and in the California Civil Code and decisions, including the duty to fulfill the purpose of the trust declared at its creation (Cal. Civ. Code, Sec. 2258; *England v. Winslow*, 196 Cal. 260), the duty of undivided loyalty to the beneficiaries (Cal. Civ. Code, Secs. 2232, 2233, and 2234; *Meinhard v. Salmon*, 249 N. Y. 458, 164 N. E. 545, 546; Bogert, *Trusts and Trustees*, Sec. 543), the duty to exercise the highest good faith and not abuse or abandon its trust (*In re L. A. County Pioneer Society*, 40 Cal. 2d 852, 862; *Assets Corporation v. Perrin Properties*, 48 Cal. App. 2d 220, 226; *People v. Cogswell*, 113 Cal. 129, 141; Cal. Civ. Code, Sec. 2228; Bogert, *Trusts and Trustees*, Sec. 961), and the duty to avoid hostility and antagonism toward the beneficiaries. (*May v. May*, 167 U. S. 310, 320, 17 S. Ct. 824, 42 L. Ed. 179; *Overell v. Overell*, 78 Cal. App. 251; *Sunday School Union of A. M. E. Church v. Walden*, 121 F. 2d 719, 724.)

Petitioner argues that only the United States may control the disposition of its own property (Pet., 10-11), and that the removal of Petitioner was a collateral attack on a deed issued by the United States. (Pet., 11-13.) There can be no question but that the United States has control over the disposition of property owned by it, but where as here it has conveyed its entire interest by quitclaim deed, state courts of equity may properly assume jurisdiction over actions concerning the property. Such actions are not a collateral attack on the deed.

The principle is enunciated in *Wilcox v. Jackson*, 13 Pet. (38 U. S.) 498, 517, 10 L. Ed. 264, as follows:

> ". . . whenever the question in any court, State or federal, is, whether a title to land which had once been the property of the United States has passed,

> that question must be resolved by the laws of the United States; but . . . whenever, according to those laws, the title shall have passed, then that property, like all other property in the State, is subject to State legislation, so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States."

Numerous decisions support this principle. (*Johnson v. Towsley*, 13 Wall. (80 U. S.) 72, 85, 20 L. Ed. 485; *Gibson v. Chouteau*, 13 Wall. (80 U. S.) 92, 102, 20 L. Ed. 534; *Capron v. Van Horn*, 201 Cal. 486, 496; *Burke v. Southern Pacific Railroad Company*, 234 U. S. 669, 34 S. Ct. 907, 58 L. Ed. 1527, cited by Petitioner, in fact recognizes the principle, at page 675.)

Petitioner is a corporation organized and created under California law, operating in California, and holding all of its properties in that state. The essence of Petitioner's position is that once such a corporation acquires property from the Federal government, although otherwise subject to supervision of the California Attorney General because organized for charitable purposes, the State of California and its Attorney General lose all control over that corporation. But it is obvious that the United States would not have deeded this property to an individual such as Mrs. Boyd. In fact, the statute permits transfer under the clause only to a "non-profit organization" (42 U. S. C. A. Sec. 1581(b)). Surely the Congress could and would expect that a non-profit organization would be subject to the usual State equitable supervision over charitable trusts and corporations. Having obtained the property on the basis of its application that it was a California non-profit corporation subject to California law, Petitioner

cannot throw off the yoke of State supervision; otherwise any corporation could remove itself from State supervision by acquiring property from the Federal government. It would claim that it was somehow outside of the State by which it was created, does business, and holds its property. In effect that would amount to a repeal of Section 9505 of the California Corporations Code and a limitation of customary Attorney General supervisory powers over charitable corporations.

The terms of the quitclaim deed provided that the grant was to Petitioner, "its successors and assigns."[27] Thus in its outright grant the Federal government recognized that successors to and assignees of Petitioner could take this property. That being so, it is inconceivable that the California courts should not be able to remove petitioner for numerous breaches of its charitable trusts and appoint a new trustee to carry out the trust purposes. And Petitioner has not cited a single authority which would support such a contention.

Contrary to Petitioner's assertion (Pet., p. 9) that the Federal questions were "largely ignored" by the California District Court of Appeal, the opinion deals with the point at 162 A. C. A. 550, 578, as follows:

> "Finally, appellants argue that '[t]he trial court has in effect determined that it, rather than Congress and the Housing and Home Finance Agency, should determine who is to manage Truman Boyd Manor'; and that [t]he contract between the United States and Memorial National Home Foundation demonstrates that the United States has not completely disposed of Truman Boyd Manor.' Hence, counsel say, this judgment interferes with the power of Con-

[27]Cross-Compl. Ex. MM-34.

> gress to dispose of and make all needful regulations concerning property of the United States. (U. S. Const., art. IV, §3, clause 2.) There is no merit in this contention for, as shown above, United States parted with its entire interest in Truman Boyd Manor; if perchance it has any rightful complaint as to performance of the contract with the Navy above discussed, that right is not affected by the judgment herein."

As a corollary to its contentions regarding control over the property, Petitioner argues that the United States by its Attorney General is an indispensable party. (Pet., pp. 14-16.) None of Petitioner's cases support the argument. (*United States v. Minnesota,* 270 U. S. 181, 46 S. Ct. 298, 70 L. Ed. 539, and *United States v. Ahtanum Irrigation District,* 236 F. 2d 321, were actions by the United States on behalf of Indians who by statute were wards of the Government and the United States was required to prosecute the actions. *Late Corporation of Latter Day Saints v. United States,* 136 U. S. 1, 10 S. Ct. 792, 34 L. Ed. 478, was an action against the Mormon Church in Utah territory under direct federal control brought by the United States Attorney General pursuant to his statutory duty to prosecute forfeiture actions under an act punishing polygamy. *Mt. Vernon Mortgage Corporation v. United States,* 236 F. 2d 724, was an action by the United States as *parens patriae* by its Attorney General against a District of Columbia corporation. And *Baptist Association v. Hart's Executors,* 17 U. S. (4 Wheat.) 1, 4 L. Ed. 499, holds, not that the United States Attorney General, but that the Attorney General of the State of Virginia, would be a necessary party to an action involving a charity. (See discussion at 17 U. S. 13-14, and 27.)

As the land patent cases hold, the United States is not a necessary party to an action involving property transferred by it. (*Daniels v. Wagner*, 237 U. S. 547, 567, 35 S. Ct. 740, 59 L. Ed. 1102; *Capron v. Van Horn*, *supra*, 201 Cal. 486, 500.)

Again the District Court of Appeal has not ignored the contention but disposed of it as follows at 162 A. C. A. 577-578:

> "The United States is not an indispensable or necessary party. The contention that it is rests upon a collateral agreement made at the time the government deeded Truman Boyd Manor to Foundation. That was done by quitclaim deed which contained no covenants or conditions. A contemporaneous agreement was made between the United States, 'represented by the Department of the Navy,' and the Foundation, under date of May 27, 1953. It recites the request of Foundation for transfer of Truman Boyd Manor pursuant to the Lanham Act, also the willingness of the Administrator of the Housing and Home Finance Agency to effect the transfer 'on the expressed condition that a satisfactory agreement be entered into between the Foundation and the Department of the Navy, with respect to operation of the project, its availability for occupancy by persons engaged in defense or mobilization activities and reasonable rentals.' Then follows the agreement that so long as there is a defense need for the project, as determined by the Navy, Foundation will continue to operate it for housing purposes and maintain reasonable rents, that it will give preference to military and other defense personnel in filling vacancies, will consult with the naval commander prior to changing any rent schedules, and in the event of hostilities will, if requested by the Navy, make the project

available for full military use. The condition mentioned was that a satisfactory agreement be made, and when the agreement under discussion was executed the condition had been performed and hence ceased to be further operative. At best, its violation could amount to a partial failure of consideration (Foundation paid $138,404.63 for the property.)—partial failure which the United States might be able to capitalize in some proceeding brought for that specific purpose. But this agreement left no cognizable interest in the property in the United States. Its rights, if any, growing out of a prospective violation of the agreement could not be affected by the judgment at bar, for the receivers and the new trustee take with full notice of the contract and become subject to all the sanctions which could be invoked against Foundation with respect to it. Under the principles announced in *Bank of California v. Superior Court*, 16 Cal. 2d 516, 520-524, [106 P. 2d 879], the United States cannot be held a necessary or indispensable party to this action."[28]

---

[28]The legislative history of the Lanham Act reveals that Congress did not intend to retain any interest in or control over properties transferred thereunder. The report of the Senate Committee (1950 Code Cong. Service, p. 2021) states at page 2056:

> "Section 601(d) of the new title . . . . provides that the applicant, in its request, shall make certain representations as to the manner in which it proposes to use the property. Your committee, in the belief that these representations can be relied upon, has not provided, and does not intend, that the use of the property after transfer shall be policed in any way by the government."

It may also be noted that the contract with the Navy provided that "The provisions of this agreement shall be binding upon the successors, transferees, or assignees of the parties hereto." (Cross-Compl. Ex. MM-32.) Much evidence was introduced at the trial showing that, while Petitioner gave the Navy contract as one reason for its failure to carry out the charitable trusts, Petitioner had ignored the Navy and the contract. [Rep. Tr. 2853-2905; 3301-3502; 1717-1724.]

Conclusion.

It is respectfully submitted that the petition for writ of certiorari should be denied for the reasons stated.

January 5, 1959

Respectfully submitted,

GEORGE E. WISE,
Attorney for Respondent, American Gold Star Mothers, Inc.

WISE & KILPATRICK,
GEORGE E. WISE,
ROBERT J. KILPATRICK,
Of Counsel.

EXHIBIT 1.

THE ACQUISITION OF TRUMAN BOYD MANOR.

During World War II the federal government erected a public housing project in Long Beach, California, named Truman Boyd Manor after one of Mrs. Boyd's sons, for use by defense workers and armed forces personnel. The project covers more than 90 acres of ground on which are erected 1,000 family dwelling units. [Admitted, Clk. Tr. p. 166, lines 3-4.] It was acquired by Memorial National Home Foundation in May, 1953, for a total consideration of $133,182.49, the cost of the land exclusive of improvements, plus a payment in lieu of taxes of $4,277.48 and the sum of $944.66 for accounts receivable, a total of $138,404.63. [Rep. Tr. Vol. XI, p. 3134, line 20, to p. 3137, line 6.]

The only down payment was the amount of the receivables, $944.66. [Rep. Tr., Vol. XI, p. 3161, line 14, to p. 3162, line 21.] A trust deed was given for the balance, payable in five annual installments with interest at 3¼%. The entire balance, however, was paid in the first year out of revenues. [Rep. Tr. Vol. XIII, p. 3702, lines 1-26.]

The property has an annual gross income of approximately $500,000.00. [Rep. Tr. Vol. XII, p. 3318, line 26, to p. 3319, line 2.] The improvements were appraised at $2,698,143.15 by appraisers retained by Memorial National Home Foundation. [Rep. Tr. Vol. XI, p. 3129, line 20, to p. 3130, line 12.]

A. Chonological Summary of the Acquisition.[1]

Prior to the 1947 Convention, when the Home was first proposed, Mrs. Boyd had become interested in the possibility of acquiring Truman Boyd Manor for a home property. Commencing shortly after the 1947 convention she began contacting Senators, Congressmen and housing officials about the possibility of obtaining transfer of the property. Between 1947 and 1950, acting as national president of American Gold Star Mothers, Inc., she sought to obtain legislation that would authorize acquisition of Truman Boyd Manor for a home. Learning that the proposed Housing Act of 1950 would establish a plan for disposal of defense housing projects, she contacted the Senate subcommittee preparing the legislation, as well as other Congressmen, urging a special amendment to the Act to enable the transfer of Truman Boyd Manor.

In 1950, such an amendment was inserted into the Act, the relevant language of the Statute (42 U. S. C. A., Sec. 1581 (b), reading as follows:

> "Upon the filing of a request therefor as herein prescribed the Administrator may, subject to the provisions of this section, relinquish and transfer, without monetary consideration other than that specifically required by this sub-section, to any . . . non-profit organization . . . where the Administrator determines that the housing involved is urgently needed by parents of persons who served in the armed forces during World War II and died of service-connected illness or injury . . ., all right, title,

---

[1]We believe a brief summary, at the outset of this section, of the steps in the acquisition of Truman Boyd Manor will be of assistance to this Court, to be followed with discussion of the evidence with transcript references.

> and interest of the United States in and with respect to any temporary housing . . . located on land in which the United States has a property interest through ownership, lease, or otherwise. . . ."

While the amendment was couched in general terms, it was generally understood that it was directed at American Gold Star Mothers, Inc.

On May 17, 1950, an application was made by Memorial National Home Foundation to the Public Housing Administration to acquire Truman Boyd Manor. The Public Housing Administration, the agency handling transfers under the Act, after requiring proof from Memorial National Home Foundation that American Gold Star Mothers, Inc., endorsed and authorized the application, approved it, and announced that it would consummate the transfer. At that point, however, the Korean War broke out, and all transfers of housing under the Act were frozen by presidential order. The transfer was finally consummated by the Public Housing Administration in May of 1953, when the Administrator of the Housing and Home Finance Agency (who assumed the duty of determining when military consideration justified an exception to the freeze order as to any property), determined that the freeze order might be lifted as to Truman Boyd Manor.

B. The Legislation Enabling Transfer of Truman Boyd Manor Was Enacted for the Benefit of American Gold Star Mothers, Inc.

Mrs. Boyd testified that she first thought of the idea of acquiring Truman Boyd Manor "as soon as I started thinking of a Memorial Home Foundation" in April, 1947. [Rep. Tr. Vol. I, p. 277, lines 3-8.] Thus, the plan to

acquire Truman Boyd Manor was already in mind before the 1947 Convention had approved a Home for the membership. And as early as August, 1947, the directors of Memorial National Home Foundation authorized Mrs. Boyd to negotiate for its acquisition. [Rep. Tr. Vol. I, p. 265, line 20, to p. 266, line 16.] She began contacting legislators and housing officials at that time [Rep. Tr. Vol. I, p. 284, line 4, to p. 292, line 26], and she thereafter remained in contact with various Congressmen and housing officials until acquisition of Truman Boyd Manor. [Rep. Tr. Vol. III, p. 625, line 14, to p. 626, line 20; p. 627, line 13, to p. 629, line 16; p. 682, line 13, to p. 686, line 25.] American Gold Star Mothers, Inc., was not advised in 1947 of these visits or Mrs. Boyd's plans for acquiring Truman Boyd Manor. "I saw no reason to advise them I was going to Washington. My instructions came from the directors of Memorial National Home Foundation." [Rep. Tr. Vol. I, p. 296, lines 18-20; p. 293, line 14, to p. 294, line 10; p. 296, lines 7-22.] Yet, although Mrs. Boyd denied that on her trips to Washington concerning Truman Boyd Manor, American Gold Star Mothers, Inc., had paid her expenses [Rep. Tr. Vol. III, p. 717, line 26, to p. 718, line 18], she later testified that she received an expense account for traveling around the country while national president of American Gold Star Mothers, Inc. [Rep. Tr. Vol. V, p. 1258, lines 5-25.] For example, in 1949, the National Executive Board allowed Mrs. Boyd $2,000.00 for mileage and $500.00 for incidentals. [Cross-Compl. Ex. DD, National Executive Board, following 1949 Convention, pp. 36 and 37 of pagination following transcript of convention proceedings which are pp. 2-288.]

By January of 1949 she had taken up with Congressman Clyde Doyle the introduction of a bill with regard

to Truman Boyd Manor. She had numerous conversations with him in the course of acquiring a housing project for Memorial National Home Foundation, and it was apparently at his suggestion that she obtained a resolution from the delegates at the 1949 National Convention of American Gold Star Mothers, Inc. authorizing her to proceed with the acquisition. [Rep. Tr. Vol. III, p. 625, line 14, to p. 629, line 16; p. 647, line 12, to p. 648, line 14.][2] She had conversations with Senator Sparkman, who was a member of the Senate Banking and Currency Committee, in his Washington office, and he consented to sponsor the special amendment for Truman Boyd Manor. [Rep. Tr. Vol. III, p. 683, line 17, to p. 684, line 11; p. 708, line 20, to p. 709, line 23.] Thereafter, she corresponded with the membership of the Committee urging passage of the legislation. [Rep. Tr. p. 703, line 16, to p. 708, line 11.]

Mrs. Boyd asserted in writing and testified at the trial that in all her efforts with legislators and housing officials to obtain special legislation and to acquire Truman Boyd Manor she spoke and acted solely as president of Memorial National Home Foundation, to obtain a housing project for Memorial National Home Foundation; never did she act as national president of or for American Gold Star Mothers, Inc. "In my negotiations with Senator Sparkman and other members of the Senate and House, as well as with Mr. Foley, Mr. Egan, and Mr. Silverman," she wrote in 1953, "all business was carried on in the name of the Memorial National Home Foundation for Gold Star Parents." [Rep. Tr. Vol. III, p. 750,

---

[2]This resolution, which was the key to the transfer, is hereinafter discussed at length.

line 25, to p. 751, line 3; Cross-Compl. Ex. MM-21.][3] "I will put it in here," she testified, "that all times I tried to see there was no confusion and whenever I tried to make any negotiations with anyone as a Director and President of Memorial National Home Foundation, I tried to explain the difference between the two corporations and the two offices, one of which I was National President of a membership organization, the other was President of a non-profit California corporation." [Rep. Tr. Vol. III, p. 701, lines 4-12.]

She stated:

> "A. Not as a membership organization. American Gold Star Mothers, Inc., did I ever ask anybody to purchase a housing project in their name, and I specifically let any and all know that I was president of one and president of the other—or I was past president of one and president of Memorial National Home Foundation. I was specific each and every time to let people know the segregation, the difference in the two.

---

[3]Mrs. Boyd would not admit that she or Memorial National Home Foundation had promoted the amendment to the Housing Act:

"Q. Were the 1950 amendments sponsored or urged upon Congress by the Memorial National Home Foundation? A. We didn't urge anything upon anyone, but we were very much interested always in all amendments, and still are, on any Housing Act.

Q. Let me ask this: Do you know of your own knowledge whether the sole purpose of the 1950 amendment to the Lanham Act was to enable the Memorial National Home Foundation to acquire Truman Boyd Manor? . . . A. I wouldn't know anything about what the ideas of Congress were in planning their legislative program." [Rep. Tr. p. 681, line 14, to p. 682, line 4.] Appellant prudently ignore these statements when asserting that Mrs. Boyd "singlehanded stepped on the Washington merry-go-round and hooked a ring in the form of an amendment to the Lanham Act. . . ." (App. Op. Br., Factual Appendix, p. 35.)

Q. It is your testimony, then, at all times, not only in your conversation with Congressman Doyle but in conversations or correspondence you may have had with any other Congressman or Senator, you were at all times seeking to get a housing project for Memorial National Home Foundation only? A. That is right.

Q. It was not your intention to acquire Truman Boyd or any other property for American Gold Star Mothers, Inc? A. It was always for Memorial National Home Foundation." [Rep. Tr. p. 628, line 19, to p. 629, line 12.]

Congressman Doyle's statement on the subject in 1953 was reported as follows:

"Congressman Clyde Doyle states he participated with Mrs. Boyd in the Congressional and Navy Department discussions at the time the enabling legislation was passed, and that it was assumed on all sides that this was a charitable project of the American Gold Star Mothers, Inc. He further commented that, in view of the national organization of American Gold Star Mothers, Inc., the matter of disposition should be handled with *great* care." [Rep. Tr. Vol. XIII, p. 3742, line 22, to p. 3743, line 2.]

The written evidence of Mrs. Boyd's actions is contrary to her statements. An early illustration that she carried on negotiations in the name of American Gold Star Mothers, Inc. is shown by a resolution passed by the city council of Long Beach, after Mrs. Boyd had appeared before the city council, relinquishing "whatever option rights the City has to purchase Truman Boyd Manor from the United States Government in favor of the American Gold Star Mothers, Inc. . . ." [Rep. Tr. Vol. III, p. 697, line 6. to p. 700, line 4; p. 689, line

6, to p. 690, line 6; p. 694, lines 4-14.] In 1950, the Long Beach city council waived the city's rights in favor of Memorial National Home Foundation [Cross-Compl. Ex. BBBB-12] and in 1956 the city took cognizance of this action waiving the city's rights in favor of the Memorial National Home Foundation and/or the legally adjudicated holder of the legal title to Truman Boyd Manor. [Rep. Tr. Vol. VI, p. 1600, line 26, to p. 1605, line 20.]

But Mrs. Boyd's correspondence with legislators and housing officials in 1949 and 1950 best reveals in whose name she carried on her negotiations for Truman Boyd Manor. The special legislation enabling transfer of Truman Boyd Manor was sponsored by Senator Sparkman and placed before the Senate by its Banking and Currency Committee. To each of the committee members Mrs. Boyd sent an identical letter soliciting the amendment. *The letters were all written on the letterhead stationery of American Gold Star Mothers, Inc. and all were signed by Mrs. Boyd over the title "National President," followed by "chairman of Board of Directors, Memorial National Home Foundation."* [Rep. Tr. Vol. III, p. 703, line 16, to p. 705, line 14; p. 707, lines 19-22.][4] In quoting the letter as evidence of Mrs. Boyd's "single-handed" efforts to obtain the legislation, appellants ignore the evidence of the letterhead and the manner of signing (App. Op. Br., Factual Appendix, pp. 35-37), surely vital to the question of whom she was thought to represent.

---

[4]Mrs. Boyd's explanation for the letterhead stationery was that they were sent out from Washington, "and I didn't carry Memorial National Home Foundation stationery with me very often or very much." No explanation was offered for signing over her title of "National President." [Rep. Tr. Vol. III, p. 702, lines 23-26.]

After informing them that "Senator John Sparkman has graciously consented" to add the desired amendment, the letter states:

> "Memorial National Home Foundation is incorporated to take care of the needy members of the American Gold Star Mothers, Inc., as well as other needy Gold Star Mothers and fathers.
>
> "The American Gold Star Mothers, Inc. is a National organization qualified in the District of Columbia after World War I. The Memorial National Home Foundation was incorporated to take care of the needy Gold Star Mothers and Fathers on a National scale." [Rep. Tr. Vol. III, p. 705, line 18, to p. 707, line 18.].

We submit that the congressman receiving this letter could have construed it only as an appeal by and for American Gold Star Mothers, Inc., the National organization, made through its president. There is no attempt "to let people know the segregation, the difference in the two." There is no statement, such as Mrs. Boyd was to make in 1953, after the transfer, that Memorial National Home Foundation "has no connection with" American Gold Star Mothers, Inc. [Rep. Tr. Vol. VI, p. 1557, lines 18-22.] There is no suggestion that Mrs. Boyd, writing as national president on official stationery of American Gold Star Mothers, was carrying on all business in the name of the Memorial National Home Foundation. Instead there is complete omission of such information. On the contrary the name of Memorial National Home Foundation is linked with American Gold Star Mothers, Inc. in two successive sentences, and the whole import of the letter is that American Gold Star Mothers, Inc. is asking for this legislation.

Despite her denials, Mrs. Boyd, as this written record establishes, identified herself and her cause as American Gold Star Mothers, Inc. in her dealings with the Congress and the housing officials. And as we shall now see, the Public Housing Administration in acting on the application for transfer of Truman Boyd Manor, likewise assumed that the amendment authorizing relinquishments for Gold Star parents was directed to Truman Boyd Manor and referred specifically to American Gold Star Mothers, Inc., and further believed that it was relinquishing Truman Boyd Manor to an organization responsible to American Gold Star Mothers, Inc.

C. The Application of the Public Housing Administration.

The transfer of Truman Boyd Manor was made by the Public Housing Administration, the operating agency which, under policies approved by the Housing and Home Finance Agency, handled relinquishments of war housing projects under the Act. [Rep. Tr. Vol. X, p. 2693, line 17, to p. 2694, line 6; p. 2734, line 26, to p. 2735, line 22.] The relationship between the two agencies is not without complexity, but in essence the Administrator of the Housing and Home Finance Agency, to whom Congress had given the responsibility for disposition of war housing, had delegated his authority to the Public Housing Administration. [Rep. Tr. Vol. X, p. 2730, lines 18-24.] It was the officials in the top levels of the Public Housing Administration who examined and approved the application of Memorial National Home Foundation and authorized relinquishment of Truman Boyd Manor to it. [Rep. Tr. Vol. X, p. 2698, line 12, to p. 2701, line 5; p. 2711, line 10, to p. 2713, line 1.] The Administrator

of the Housing and Home Finance Agency reserved no rights in his delegation [Rep. Tr. Vol. X, p. 2731, line 13, to p. 2732, line 6], but after commencement of Korean hostilities the Administrator's office took over the function of maintaining liaison with the military departments and advising the Public Housing Administration when projects no longer required by the military might be relinquished. [Rep. Tr. Vol. X, p. 2732, line 6, to p. 2734, line 5.]

The evidence of appellants negotiations in 1950 with the Public Housing Administration comes from three sources: the documentary evidence, Mrs. Boyd's testimony, and the testimony of Herman Fliege and Abner Silverman, two of the dozen top Public Housing Administration officials directly responsible for the transfer of Truman Boyd Manor, and without whose approval the transfer could not have been made. [Rep. Tr. Vol. X, p. 2700, lines 15-23; p. 2711, line 18, to p. 2713, line 1; Testimony of Fliege.][5]

When the Housing Act of 1950 became law, the Public Housing Administration held a series of conferences of top level officials on the legislation, to reach accord as to the intent of Congress and to determine how the legislation was to be carried out. [Rep. Tr. Vol. X, p. 2761, lines 3-8; p. 2763, lines 10-19; p. 2764, lines 14-17; p. 2651, line 16, to p. 2652, line 10; p. 2643, line 22, to p.

---

[5]Appellants' brief makes no mention of any of this testimony of Fliege and Silverman. Without explanation or apology, appellants ignore the crucial evidence of those two men which explains in detail the understanding by the Public Housing Administration of the relationship of Mrs. Boyd to American Gold Star Mothers, Inc., and the basis on which the Public Housing Administration relinquished Truman Boyd Manor to Memorial National Home Foundation.

2644, line 8.] Silverman and Fliege participated in these conferences. Silverman, in 1950, was Assistant Commissioner of the Public Housing Administration for Field Operations, reporting directly to the Commissioner [Rep. Tr. Vol. X, p. 2726, line 20, to p. 2728, line 18], and as the official who supervised operation of Truman Boyd Manor his approval was necessary for the relinquishment to Memorial National Home Foundation. [Rep. Tr. Vol. X, p. 2711, line 15 to p. 2713, line 1.] Fliege was director of the Management Operations Branch of the War Housing Division of the Public Housing Administration, handling the review and basic approval of requests for relinquishments of housing [Rep. Tr. Vol. IX, p. 2623, lines 12-16], and he made recommendations on relinquishments to the Assistant Commissioners over his signature. [Rep. Tr. Vol. X, p. 2669, lines 7-23; p. 2700, lines 15-23.] These men and others participated in ten or twelve such meetings between April and June of 1950. [Rep. Tr. Vol. IX, p. 2651, line 19, to p. 2652, line 10; p. 2645, lines 18-19.]

At the conferences it was recognized that certain portions of the Act, though couched in general terms, dealt with specific projects; for example, an amendment affecting only the City of Richmond and a provision referring specifically to a masonry project in a mid-west state. [Rep. Tr. Vol. X, p. 2765, line 9, to p. 2766, line 19.] In the same manner, the amendment authorizing relinquishments for homes for Gold Star Parents was identified at the first or second meeting with Truman Boyd Manor and American Gold Star Mothers, Inc., and it was the consensus of the meetings that that amendment referred specifically to American Gold Star Mothers, Inc. [Rep. Tr. Vol. X, p. 2766, line 20, to p. 2767, line 13;

p. 2648, line 26, to p. 2653, line 20; p. 2660, line 6, to p. 2661, line 8.] The head of the Public Housing Administration, Commissioner Egan, as well as Silverman and Fliege, expressed that opinion. [Rep. Tr. Vol. IX, p. 2661, line 9, to p. 2662, line 14; Vol. X, p. 2765, line 9, to p. 2768, line 21.] The Public Housing Administration officials knew that the organization called American Gold Star Mothers was a large national organization with thousands of members and many chapters throughout the country [Rep. Tr. Vol. X, p. 2755, line 26, to p. 2756, line 10; p. 2642, line 18, to p. 2643, line 8], and it was the only national organization they knew of concerned with the problem of parents of deceased servicemen.[6] [Rep. Tr. Vol. X, p. 2780, lines 4-8.] They knew of no other organization they could identify with the legislation or that fitted into the requirements of the Act. [Rep. Tr. Vol. IX, p. 2663, lines 1-26.] In fact, as Silverman observed: "[W]hen the legislation was being considered, it was my understanding that it was being sponsored or being requested by American Gold Star Mothers, Inc." [Rep. Tr. Vol. X, p. 2781, lines 4-6.]

---

[6]Their understanding of the nature of the organization was well expressed by Fliege in the following:

"By Mr. Wise: Now, in connection with this latter discussion, on this second project, was there discussion with respect to the organization known as American Gold Star Mothers?

Mr. Wright: Incorporated.

Mr. Wise: Well, Mr. Fliege has already mentioned he didn't know whether or not it was incorporated.

The Witness: I treated it in much the same fashion that I would mention American Legion. I couldn't tell you, even right now, whether the American Legion is incorporated. I presume it is. But I never discuss it as the American Legion, Incorporated, and that is the same way I treated American Gold Star Mothers." [Rep. Tr. Vol. IX, p. 2649, lines 12-25.]

Mr. Silverman, in fact, had met Mrs. Boyd in his office at about the time the Act was passed and had been informed of her interest in the property. She came into his office, "identified herself orally by telling me she was the president of the American Gold Star Mothers, Inc., and giving me a card, if I recall correctly, which had her name and organization, and mentioning herself as president. She also wore a badge of office, I believe you would call it, of the organization." [Rep. Tr. Vol. X, p. 2739, lines 12-18.] She advised him of her interest "in securing for Gold Star Mothers, parents, a home for their need" and specified that Truman Boyd Manor was ideally suited for the purpose. She further told him that efforts were then being made to secure legislation permitting the transfer. [Rep. Tr. Vol. X, p. 2740, lines 10-26.]

Silverman's account of this meeting and his subsequent meetings with Mrs. Boyd further refutes her assertions that in her negotiations with legislators and housing officials she carried on all business as president of Memorial National Home Foundation and that she tried to explain the difference between the organizations. [Rep. Tr. Vol. III, p. 701, lines 4-12; Vol. XIII, p. 3800, line 25, to p. 3801, line 3.] Silverman had ten or eleven conferences with Mrs. Boyd and a half dozen phone calls [Rep. Tr. Vol. X, p. 2744, lines 11-21], following the initial meeting. "At the outset she would identify herself as president of American Gold Star Mothers, Inc. Later on, when we had more than a few meetings, when she called, I would know which Mrs. Boyd it was. . . . [A]fter three or four meetings, like any other interchange of calls, you would know who the person calling was without organization reference." [Rep. Tr. Vol. X, p. 2749, lines

2-13.] When Mrs. Boyd was seeking to lift the disposition freeze on Truman Boyd Manor, Silverman took her in 1951 to a Navy Official in Washington and introduced her to him as president of American Gold Star Mothers, Inc. [Rep. Tr. Vol. X, p. 2750, line 24, to p. 2751, line 16.] He was "very much" aware that from 1948 to 1952 Mrs. Boyd was president of American Gold Star Mothers, Inc. and acting on their behalf:

"Q. Were you aware that during the period 1948 through June of 1952 Mrs. Boyd was president of the American Gold Star Mothers, Inc.? A. Very much so.

Q. You say very much so? A. I mean—well, you know Mrs. Boyd, she wore the—I don't know whether it was a badge of office or not, but she was always identified as—

Q. Well, will you tell us why you knew she was president during that period? A. For example, she sent my wife and myself an invitation to participate at the annual memorial service at Arlington.

Q. That is an American Gold Star Mothers function? A. That is an American Gold Star Mothers function; and the invitation was signed, if I remember, by Mrs. Boyd as president.

Q. Any other reasons why you were made aware of this fact? A. Just that Mrs. Boyd always spoke with emphasis of the need for American Gold Star parents to have this housing; that she was president of the organization, and that she had promised the organization that she would diligently overcome this Washington slowness in consummating the transaction. There was never any question that she was president of the American Gold Star Mothers in

carrying out what she thought was a very desirable activity in their behalf." [Rep. Tr. Vol. X, p. 2754, line 24, to p. 2755, line 25.]

On the one occasion when Fliege met Mrs. Boyd, she dealt with him, also, as president of American Gold Star Mothers, Inc. The meeting was "in the early stages" in 1950 [Rep. Tr. Vol. X, p. 2680, lines 19-20], and she advised him that "the American Gold Star Mothers were meeting in convention in a short time, she was the President of that organization, and was anxious to have this accomplished before her term of office expired." [Rep. Tr. Vol. X, p. 2681, lines 21-26.] She did not mention any other organization to him. [Rep. Tr. Vol. X, p. 2682, lines 1-3.]

On one occasion Mrs. Boyd ordered the National Executive Board of American Gold Star Mothers to appear before the Public Housing Officials to demand Truman Boyd Manor "for our Christmas present." [Rep. Tr. Vol. III, p. 1996, line 12, to p. 1998, line 24; Vol. VIII, p. 2216, line 2, to p. 2218, line 10.] Mr. Silverman does not recall the exact conversations but recalls that in 1951 the American Gold Star Mothers, Inc. board members were taken in by Mrs. Boyd to see Mr. Egan in Silverman's presence to get assurance that the Public Housing Administration had not changed its mind. [Rep. Tr. Vol. X, p. 2758, line 17, to p. 2760, line 14; p. 2796, line 14, to p. 2797, line 19.]

So closely was American Gold Star Mothers, Inc. identified with Truman Boyd Manor that the discovery that an unknown corporation was the proposed transferee came as a surprise to the Public Housing Administration. "[W]e had assumed, I think, in the Agency," Silverman said, "that the application would be made by

American Gold Star Mothers, Inc. which was the only national organization concerned with the problem of parents of deceased servicemen." [Rep. Tr. Vol. X, p. 2780, lines 4-8.] And the original request from the San Francisco office identified the project as being requested by the American Gold Star Mothers. [Rep. Tr. Vol. IX, p. 2639, lines 2-6.]

The fact that Memorial National Home Foundation was the proposed transferee was discussed at one of the first Public Housing Administration conferences on Truman Boyd Manor. [Rep. Tr. Vol. X, p. 2767, lines 17-20.] The Public Housing Administration officials were concerned that the body they were dealing with had recognition by the national organization, American Gold Star Mothers, Inc., as being a body who could carry out the purposes of the statute, and they determined that "we would require the endorsement of the American Gold Star Mothers, Inc., in order to be assured that this project was to be transferred to a group which would carry out the purposes of housing Gold Star parents. . . ." [Rep. Tr. Vol. X, p. 2767, line 20, to p. 2768, line 21.] They held a conference with Mrs. Boyd and Mr. Faries, at which they questioned Mrs. Boyd about the relationship between Memorial National Home Foundation and American Gold Star Mothers, Inc. [Rep. Tr. Vol. X, p. 2741, line 5, to p. 2748, line 23; p. 2754, lines 10-23.] ". . . PHA, talking now as an organizational entity, asked the question, 'Who is the Memorial National Home Foundation, and why is it you propose that the transfer be made to this corporation?' " [Rep. Tr. Vol. X, p. 2747, lines 10-15.] They were advised "that the National Memorial Home Foundation had been incorporated prior to any contemplation of legislation

for the purpose of providing homes for Gold Star parents, and that the transfer to that organization had been endorsed by a resolution of the American Gold Star Mothers, Inc., at their last next preceding annual convention or regular convention." [Rep. Tr. Vol. X, p. 2747, lines 16-26.]

The Public Housing Administration advised Mrs. Boyd and Mr. Faries that they "would require the endorsement of American Gold Star Mothers, Inc.," and requested that a copy of the convention resolution described by Mrs. Boyd be submitted with the application, as well as evidence of the need for the housing by Gold Star parents, of the willingness to serve Gold Star parents regardless of race, color, or creed, and of the non-profit character of Memorial National Home Foundation. [Rep. Tr. Vol. X, p. 2743, lines 5-20; p. 2748, lines 1-23.]

The application which Memorial National Home Foundation presented to the Public Housing Administration was carefully designed to and did satisfy the agency that Memorial National Home Foundation was applying for transfer of Truman Boyd Manor with the approval of American Gold Star Mothers, Inc., and would administer the property as contemplated by Congress. Attached to the application were, among others, the following documents:

(a) A 1949 Convention resolution by American Gold Star Mothers, Inc., authorizing Mrs. Boyd to acquire Truman Boyd Manor, which provided:

"RESOLVED that the American Gold Star Mothers, Inc. authorize the Chairman of Memorial National Home Foundation to proceed to acquire the emergency Housing Project now under consideration in the 18th Congressional District of the State of California, that project being ninety (90) acres, which assures us of plenty of room to take care of the mothers and fathers who need assistance; to be known as the Memorial National Home Foundation property for Gold Star mothers and fathers throughout the nation." [Ex. BBBB-9.]

(b) An amendment to the by-laws adopted August 31, 1949, by the "Board of Directors of American Gold Star Mothers, Inc. Memorial National Home Foundation," (the name had been changed to Memorial National Home Foundation over a year before that date) providing that the president of American Gold Star Mothers, Inc. "shall be" a member of the Board of Directors of Memorial National Home Foundation and the president and chairman of the Board of Memorial National Home Foundation "must be" a member of American Gold Star Mothers, Inc. and "automatically, by reason of her office in Memorial National Home Foundation, shall be a voting member of the Executive Board of The American Gold Star Mothers, Inc." [Ex. BBBB-3.]

(c) The "Statement of Eleanor D. Boyd, president of Memorial National Home Foundation and National President of American Gold Star Mothers, Inc., a non-profit corporation" in support of the application. [Ex. BBBB-10.] This supporting statement is on the official letter-

head stationery of American Gold Star Mothers, Inc., which contained Mrs. Boyd's name and her title of national president.[1]

(d) The supplement to Mrs. Boyd's statement, giving Veterans Administration statistics on death compensation being paid to dependents of World War II. [Cross-Compl. Ex. BBBB-11.]

The application thus included, among other documents, (1) a resolution by which American Gold Star Mothers

---

[1]The pertinent portions of Mrs. Boyd's statement were as follows:

"AMERICAN GOLD STAR MOTHER, INC.
Organized June 4, 1928
Incorporated January 5, 1929
NATIONAL PRESIDENT
Administration June 1949—June 1950
MRS. ELEANOR D. BOYD
1255 East Second Street
Long Beach 2, California

NATIONAL HEADQUARTERS
1507 M Street, N.W.
Washington, D.C.
National Founder
Mrs. Grace Darling Seibold

"STATEMENT OF ELEANOR D. BOYD, PRESIDENT OF MEMORIAL NATIONAL HOME FOUNDATION AND NATIONAL PRESIDENT OF AMERICAN GOLD STAR MOTHERS, INC. A NONPROFIT CORPORATION IN SUPPORT OF APPLICATION FOR RELINQUISHMENT AND TRANSFER OF PHA PROJECT NO. CAL.-4807.

"Eleanor D. Boyd, who is also Mrs. Walter H. Boyd, of 1255 East 2nd Street, Long Beach, California, makes this statement in support of an application for relinquishment and transfer of the United States Government's interest in PHA PROJECT No. CAL.-4807, to Memorial National Home Foundation (for Gold Star Mothers and Fathers)

"No. 1. The undersigned is the duly elected and qualified President of American Gold Star Mothers, Inc., a nonprofit corporation, consisting of parents of persons who lost their lives in the Armed Services of the United States of America and its Allies. She is also the duly elected and qualified President of Memorial National

authorized Mrs. Boyd to proceed with the acquisition of the project which "assures us plenty of room," (2) an interlocking directorate by-law showing that the president of each corporation is, by virtue of her office, a member of the other board, which, together with the articles, satisfied the PHA that there was "this interlocking directorship between the two organizations" [Rep. Tr. Vol. X, p. 2804, lines 22-23], and (3) a formal statement by Mrs. Boyd as president of both corporations on letterhead stationery of American Gold Star Mothers,

---

Home Foundation, A California nonprofit corporation, with its principal place of business in Long Beach, California, organized to take care of the National load of needy Gold Star Mothers and Fathers. The following main purposes:" [followed by the purpose clause of the articles as amended in 1948]

. . . . . .

"2. Memorial National Home Foundation has been searching for and attempting, over a period of nearly three years, to locate and establish and provide for the maintenance of a home for needy Gold Star parents, preferably in the State of California, where, as shown by its resolution, the American Gold Star Mothers, Inc., feel it to be to the best interest of said persons that said home be established in Long Beach, California, by purchase of the property described in its resolution.' American Gold Star Mothers, Inc., in its last National Convention, which took place at the Sherman Hotel in Chicago, Illinois, authorized the President of Memorial National Home Foundation '* * *' to proceed to acquire the emergency housing now under consideration in the 18th Congressional District, State of California, that being a project of 90 acres, which assures us of plenty of room to take care of the mothers and fathers who need assistance; to be known as Memorial National Home Foundation property for mothers and fathers throughout the Nation.' A certified copy of the resolution adopted is attached hereto marked exhibit 'A' and made a part hereof.

"3. The housing involved is needed by parents of persons who served in the Armed Forces in World War II and died of service connected illness or injury. Approximately 25,000 mothers and almost as many fathers are a part of American Gold Star Mothers, Inc. Of these not less than 10 per cent of our members or parents now desire and need such housing. Their condition has been contributed to by their patriotic efforts. Their loyalty has caused them to work for the United States of America, when they were not

Inc. which: (a) referred to American Gold Star Mothers, Inc. as "a non-profit corporation consisting of parents of persons who lost their lives in the Armed Services of the United States of America and its allies"; (b) described the membership of American Gold Star Mothers, Inc. as "25,000 mothers and almost as many fathers. Of these not less than 10 per cent of our members or parents now desire and need such housing" and describing patriotic efforts and loyalty of the members and their financial and phyical need. The further following refer-

---

physically and mentally able to do so, while they were worrying over the conditions at the Front. Their physical condition now has decreased their ability to earn and provide for themselves the necessities of life. In addition to the said Gold Star parents who are members of the American Gold Star Mothers, Inc., there are many times over Gold Star parents in need, which this home will be available and will care for such needy persons. As the years go by additional ones will be needy and eligible for admission to the home. The area, therefore, and the housing now thereon, and which it is the plan to place thereon in permanent form, will all be needed for needy parents of persons who served in the Armed Forces during World War II, and died of service connected illness or injury.

"4. Arrangements have been made for competent and experienced management under the supervision of the directors, a majority of whom are Gold Star Mothers, and all members of American Gold Star Mothers, Inc., all directors serving without compensation.

"5. The directors feel that the living, both individual citizens and Government Officials, have an obligation to the men who did not come back. They trusted their Nation and their neighbors to care enough, to do something to make their mothers and fathers more comfortable when they are needy. The American Gold Star Mothers, Inc., and the directors of the Memorial National Home Foundation have been striving to Keep Faith with the men who didn't come back, who believed that freedom for all people was a necessity even unto giving their lives. The Memorial National Home Foundation will be a Home of Free People in a Free Nation.

"Dated: May 1st, 1950

/s/ Eleanor D. Boyd
Eleanor D. Boyd (Mrs. Walter H. Boyd)"

ence that in addition to the membership "there are many times over Gold Star Parents in need, which this home will be available and will care for such needy persons" is a general and passing reference and the only such reference, in a document which unmistakably links the Foundation and the American Gold Star Mothers. And it should be recalled that Mrs. Boyd expressed to the membership her position that non-members could become eligible for benefits by joining American Gold Star Mothers, Inc. [Rep. Tr. Vol. IX, p. 2470, line 23, to p. 2471, line 19; Vol. VIII, p. 2284, line 1, to p. 2285, line 17; Vol. VII, p. 2037, lines 12-15], surely no difficult task in an organization whose annual membership dues are $3.00 per year ["The Gold Star Mother", p. 8; Cross-Deft. Ex. 7, pp. 3 and 8; of this $2.00 represented national and department per capita and The Gold Star Mother subscription]; (c) stated that management was to be under supervision of the directors, a majority of whom are "members of American Gold Star Mothers, Inc."

There was thus an unmistakable linking and lacing of the two corporations as to both management and beneficiaries.

The conclusion reached by the Public Housing Administration was that "Memorial National Home Foundation was a corporation that had been established to take title to the property as an operating organization for" American Gold Star Mothers, Inc, [Rep. Tr. Vol. X, p. 2673, line 14, to p. 2674, line 17.] Silverman said, "I was under the impression, and I took steps to have it documented, that the Memorial National Home Foundation was a body that was approved by the American Gold Star Mothers, Inc., for the purposes of this relinquish-

ment; and the record on that point speaks for itself, because the application was accompanied by a certified copy of the resolution to which I refer." [Rep. Tr. Vol. X, p. 2803, lines 18-26.] The review of the application was made by Fliege's office under his direction [Rep. Tr. Vol. IX, p. 2623, lines 3-16; p. 2668, lines 11-20 and then processed to the higher officials in the agency with a recommendation signed by Fliege. [Rep. Tr. Vol. X, p. 2669, lines 14-23; p. 2700, lines 15-23.] The final approval of the application and authorization to transfer was given by Mr. Egan, Commissioner of the Public Housing Administration [Rep. Tr. Vol. X, p. 2790, lines 19-23; Cross-Compl. Ex. BBBB-23], but before doing so he required approval of Silverman, Fliege, and other top officials. [Rep. Tr. Vol. X, p. 2801, lines 17-23; p. 2711, line 15, to p. 2713, line 1.]

When they advised Commissioner Egan of the nature of the transaction, "He wanted our assurance—and by 'our' I mean the staff of PHA—that the relinquishee in the documents was the one endorsed by the American Gold Star Mothers, Inc." [Rep. Tr. Vol. X, p. 2777, lines 14-17.]. "He asked whether the American Gold Star Mothers, Inc., had approved this transaction. We told him of the resolution, copy of which we had received." [Rep. Tr. Vol. X, p. 2778, lines 7-10.]

The Public Housing Administration required this resolution as a condition of transfer. "[W]e insisted upon an endorsement by American Gold Star Mothers, Inc. and we received such a resolution of endorsement with the application." [Rep. Tr. Vol. X, p. 2798, lines 14-17.] "When we were satisfied that the endorsement had been given to the Foundation, we stopped questioning the need for such endorsement. That condition had been satisfied."

[Rep. Tr. Vol. X, p. 2768, line 25, to p. 2769, line 1.] And they relied on that endorsement in making the transfer. The question was asked of Silverman. "Insofar as your action upon the application of Memorial National Home Foundation for relinquishment of Truman Boyd Manor was concerned, you did rely upon, it was your testimony, was it not, the resolution of American Gold Star Mothers, Inc., that accompanied the application? A. Oh, yes." [Rep. Tr. Vol. X, p. 2806, lines 17-23.]

The Public Housing Administration officials responsible for the transfer were convinced that there was a close connection between Memorial National Home Foundation and American Gold Star Mothers, Inc. In 1950, Fliege's understanding was that "they were basically one and the same," and he had "no different understanding" when the transfer was made in 1953. [Rep. Tr. Vol. X, p. 2671, lines 19-20; p. 2673, lines 1-13.] When the application was revived in 1953, he was still under the impression that the Memorial National Home Foundation was established to take title to the property for American Gold Star Mothers, Inc. [Rep. Tr. Vol. X, p. 2674, lines 3-7 and 15-17.] Silverman understood not only "that the National Home Foundation was the body to whom the American Gold Star Mothers wished the project to be relinquished to carry out the purposes of the statute" but also "we understood that there was a close relationship through the device of having a majority of the directors of the separate foundation members of the parent organization, plus the resolution of the American Gold Star Mothers, Inc., to the effect that we were dealing with that body that the large or national membership organization wanted us to deal with to carry out the purposes of the section of the Lanham Act." [Rep. Tr. Vol. X, p. 2770 lines 5-8; p. 2771, line 10, to p.

2772, line 8.] The Public Housing Administration, as Silverman viewed it, had "two basic evidences of connection: One was the resolution of endorsement by the American Gold Star, and the other providing for the majority of the National Home Foundation directors to be American Gold Star Mother members in good standing. Now, there is a connection, as far as I am concerned." [Rep. Tr. Vol. X, p. 2802, lines 16-24.] Indeed, he could not say that he considered either of them exclusively apart from the other. [Rep. Tr. Vol. X, p. 2805, lines 14-17.]

On this understanding the Public Housing Administration approved the application and announced that it would effect the transfer. The announcement was made by Commissioner Egan on June 7, 1950, in the form of a letter sent to Mrs. Boyd at the American Gold Star Mothers National Convention, then meeting in Detroit. Pertinent portions of the letter are as follows:

> "Mrs. Eleanor D. Boyd, President
> American Gold Star Mothers, Inc.
> Book-Cadillac Hotel
> Detroit, Michigan
>
> "Dear Mrs. Boyd:
>
> "This is with reference to the application for a transfer of Project CAL-4807 filed by the Memorial National Home Foundation, pursuant to the provsions of Public Law 475 of the 81st Congress.
>
> "Based on the statements contained in the application, and particularly on the representations in your supporting statement and in the supplemental statement made by Mr. McIntyre Faries, Secretary of the Foundation, it is my determination that the housing

involved is needed by parents of persons who served in the Armed Forces during World II and who died of service connected illness or injury. Therefore, the project is eligible for transfer pursuant to the provisions of Section 601 (b) of said Act to the Memorial National Home Foundation, which is a non-profit corporation organized for the purposes of acquiring and operating a Home for the parents of persons who served in the Armed Forces during World War II and who died of service connected illness or injury.

"Subject to the working out of the technical details and the requirements of the statute with regard to payment for the land involved, I am happy to inform you that this agency will exercise the authority vested in the Administrator pursuant to the Act, and will transfer the project to the Foundation. I am making this commitment to you at this time, prior to agreement on all of the details, as I understand you desire to make an announcement this week with regard to the possibilities of carrying out the Foundation's objective, particularly with regard to the obtaining of this project.

. . .

"May we extend to your organization our wishes for complete success in the consummation of the task you are undertaking.

Sincerely,

John Taylor Egan

Commissioner".

[Rep. Tr. Vol. III, p. 755, line 13, to p. 758, line 7; Cross-Compl. Ex. MM-27.]

This and other correspondence between Mrs. Boyd and the Public Housing Administration and Housing and Home Finance Agency Washington offices in 1950, the year the application was made and approved, was carried on, with rare exceptions, in the name of American Gold Star Mothers, Inc.[8] A letter from Mrs. Boyd to Commissioner Egan dated August 17, 1950, discussing the effect of the freeze order, was signed, "Mrs. Walter H. Boyd, National President, American Gold Star Mothers, Inc.," and related, "as I have been traveling from Chapter to Chapter since seeing you, there are many thousands of the Mothers and Fathers who are very pleased with the idea of the permanent home being at Truman Boyd Manor." [Rep. Tr. Vol. III, p. 741, line 8, to p. 742, line 7; Cross-Compl. Ex. MM-4.] A letter from Raymond M. Foley, Housing and Home Finance Agency Administrator, dated August 29, 1950, was addressed to "Mrs. Walter H. Boyd, National President, American Gold Star Mothers, Inc." [Rep. Tr. Vol. III, p. 742, line 9, to p. 743, line 4; Cross-Compl. Ex. MM-5] as was a letter of August 30, 1950, from Commissioner Egan, which replied to hers of August 17, 1950, and expressed the hope "that international developments in the near future will enable us to again pursue the transfer of this project to your organization." [Rep. Tr. Vol. III, p. 744, lines 5-7.] Again on September 13, 1950, Mrs. Boyd wrote to Administrator Foley as National President of American

---

[8]Later correspondence between Mrs. Boyd and the Housing and Home Finance Agency and Public Housing Administration local offices in Los Angeles and San Francisco was carried on in the name of Memorial National Home Foundation. At that time the application had been long approved by the Public Housing Administration in Washington, and only the Presidential freeze order was holding up the transfer.

Gold Star Mothers, Inc., and Foley so addressed her in a letter of February 8, 1951. [Rep. Tr. Vol. III, p. 744, line 11, to p. 746, line 16; Cross-Compl. Ex. MM-7; p. 746, line 17, to p. 748, line 26.]

This is the evidence in the record of the stated beliefs and actions of the key Public Housing Administration officials responsible for the transfer of Truman Boyd Manor to Memorial National Home Foundation. Appellants' brief does not so much as intimate that the testimony of the PHA officials related above in detail, is in the record. Instead, appellants have attempted to obfuscate the evidence on this issue by a misleading summary of the testimony of Mr. Justin Herman, the San Francisco regional representative for, not the Public Housing Administration, but the Housing and Home Finance Agency.

To understand Herman's actual participation in the matter, it is necessary to recapitulate the important chronological steps in the transfer, and the parts played by the Public Housing Administration and the Housing and Home Finance Agency therein. The application for the transfer and all of the negotiations with the Public Housing Administration which have just been discussed occurred in 1950. As we have seen, the Commissioner of the Public Housing Administration announced in June, 1950, that the application had been approved and the transfer would be effected. The letter is clear that it was the Public Housing Administration which made the determination of need, approved the application, and would make the transfer, and this was properly the function of the Public Housing Administration under the delegation of authority by the Administrator of the Housing and Home Finance Agency. As we have heretofore

pointed out, the Administrator at that time (June, 1950) had reserved no rights in the delegation, and the Housing and Home Finance Agency carried out no specific functions and exercised no authority at that time with respect to the disposition process. Even the negotiations with the military to obtain their consent to transfers were, up to June of 1950, the function of Fliege's office.

When hostilities broke out in Korea in June of 1950, the transfer of Truman Boyd Manor and all other dispositions were "frozen" by presidential order. At that time the Housing and Home Finance Agency assumed the function of advising the Public Housing Administration field offices when transfer might be completed of projects no longer required by the military. The Administrator of the Housing and Home Finance Agency set up regional representatives to perform this function and other advisory functions. The regional representatives's determinations were authoritative on the question of military need; they were purely advisory on other matters.

Silverman sets forth the foregoing analysis in detail. [Rep. Tr. Vol. X, p. 2730, line 14, to p. 2734, line 5.] A similar explanation is given by Fliege [Rep. Tr. Vol. IX, p. 2624, line 9, to p. 2625, line 10], and Silverman's analysis of Herman's functions as a regional representative is accepted as correct by Herman. [Rep. Tr. Vol. XIII, p. 3777, line 13, to p. 3779, line 10.] Herman's own description of his functions was as follows:

> "My responsibilities were to make recommendations to the central office of the Agency as to the lifting or elimination of a so-called 'freeze order.' The freeze order was an action of the Administrator of the Agency preventing transfer or release of these

properties for the purpose of providing a defense facility; that is, the prevention of the lifting of the freeze was for that purpose. And when questions of release or relinquishment were presented, it was the responsibility of this office, under my direction, to propose to the Administrator whether the property should be released or not." [Rep. Tr. Vol. XIII, p. 3730, lines 5-16.]

"Q. Your primary concern was with respect to the war effort, that is, your concern and the concern of this office would be with respect to the war effort and coordinating the military effort and the needs for housing for military purposes? A. Yes, sir.

Q. Did your office have any authority or control over the field office of the Public Housing Administration with respect to a specific transfer or over the office of the Public Housing Administration in Washington, D.C.? A. This office had no operating control over either of those offices." [Rep. Tr. Vol. XIII, p. 3772, line 21, to p. 3773, line 7.]

Herman also testified that the basic decision for transfer was made by the Administrator of the Housing and Home Finance Agency [Rep. Tr. Vol. XIII, p. 3773, lines 18-20], but the documents he produced as that decision were the following: (1) a memorandum of May 25, 1953, to Wright L. Felt, Area Representative from Paul Emmert, Acting Regional Representative, which stated: "On May 20 the Administrator approved an exception to the disposition suspension order to permit transfer of Project Cal 4807 to the Memorial National Home Foundation. A duplicate formal authorization will be forwarded to you upon receipt" [Rep. Tr. Vol. XIII, p. 3774, line

20, to p. 3775, line 3] and (2) a form dated May 20, 1953, and signed by Albert M. Cole, Administrator which states that "a project identified as Cal 4807, Truman Boyd Manor, after clearance with the Navy, on May 13, 1953, and the Regional Representative on March 27, '53, may be transferred and that the Public Housing Administration is authorized to proceed with disposition . . ." subject to execution of a satisfactory contract with the Navy. [Rep. Tr. Vol. XIII, p. 3775, lines 5-19.]

With this understanding of the limited nature of Herman's functions with respect to the Truman Boyd Manor transfer, we turn to a consideration of the activities of his office in the Spring of 1953. Pursuant to his responsibility to make recommendations as to the lifting of the freeze order, Herman participated in staff discussions about relinquishment of Truman Boyd Manor to Memorial National Home Foundation in the early part of 1953. [Rep. Tr. Vol. XIII, p. 3730, lines 5-21.] Up to approximately March 27, 1953, he had thought that Memorial National Home Foundation was "an arm or extension or agent or some directly related body of American Gold Star Mothers, Inc." [Rep. Tr. Vol. XIII, p. 3807, lines 18-22.] He was informed about that time that it might not be [Rep. Tr. Vol. XIII, p. 3807, lines 23-24] and that there was a protest to the proposed transfer, from whom he could not remember. [Rep. Tr. Vol. XIII, p. 3733, lines 4-16.] This was apparently the letter dated March 24, 1953, addressed to Mr. Melville, head of the San Francisco field office of the Public Housing Administration, from a Preston L. Wright, not an official of either the Public Housing Administration or the Housing and Home Finance Agency, in fact Housing Director of the County of Los Angeles. [Rep. Tr. Vol.

XIII, p. 3764, line 20, to p. 3767, line 13; appellants set forth this letter in full, Appendix, p. 42, but do not mention that Wright was not connected with the two agencies involved.] He asked Mr. Felt of the Los Angeles office of the Housing and Home Finance Agency to investigate the questions posed. [Rep. Tr Vol. XIII, p. 3735, lines 19-22.] He received a lengthy memorandum on April 14 from Felt. [Rep. Tr. Vol. XIII, p. 3738, line 25, to p. 3748, line 23.] The reply set forth the substance of the articles of Memorial National Home Foundation, amendments thereto, and Mrs. Boyd's explanation of the amendments, in which she stated that "as President of American Gold Star Mothers she pushed through the legislation enabling relinquishment for use by Gold Star parents, but that the amendments were forced on her by Abner Silverman of PHA to comply with the law. She implies that these changes were approved by American Gold Star Mothers, Inc. The Felt memorandum further relates that various local members of American Gold Star Mothers, Inc., allege that the amendments were not known to them; that Congressman Doyle states that it was assumed on all sides that this was a charitable project of the American Gold Star Mothers, Inc., and that because of American Gold Star Mothers, Inc., the matter should be handled with great care; that Felt has made contact with seven Gold Star parents who expressed concern over the proposed transfer for various reasons; that Mrs. Boyd reported "that part of her opposition was stirred up by unnamed persons mentioned by the Un-American Activities Committee; that there is considerable feelings on all sides which is reported to be spreading to other chapters throughout the country; that the transfer had been protested by the president of the Long Beach Chapter, and that the then

national president of American Gold Star Mothers, Inc., had written that "as a director of the Memorial National Home Foundation" she did not favor acquiring Truman Boyd Manor; and that the statements raise questions about the disposition which required clarification. Herman was also sent three resolutions which the Long Beach Chapter proposed to submit at the June, 1953, convention regarding the Foundation. [Rep. Tr. Vol. XIII, p. 3757, line 25, to p. 3761, line 3.]

These documents, which raised issues considerably outside the scope of Herman's concern with coordinating the military effort, unquestionably showed a strong feeling concerning the transfer of Truman Boyd Manor and the attempted separation of interest between Memorial National Home Foundation and American Gold Star Mothers, Inc.

On April 16, 1953, Mrs. Boyd wrote Mr. Filley, of Housing and Home Finance Agency, regarding the relationship between the organizations.[1] On the one hand

---

[1] "MEMORIAL NATIONAL HOME FOUNDATION
For
AMERICAN GOLD STAR PARENTS
1255 East Second Street
Long Beach, California

April 16, 1953

"Mr. Robert B. Filley,
Area Economist,
Housing and Home Finance Agency,
112 West Ninth Street,
Los Angeles 15, California

"Dear Mr. Filley:

"To confirm our telephone conversation as to the relationship between the Memorial National Home Foundation and the American Gold Star Mothers, Inc., I would like to state the following.

"The Memorial National Home Foundation for Gold Star Parents and the American Gold Star Mothers, Inc. are two sepa-

the letter was advising that the two corporations were separate and distinct corporations, "Neither corporation is responsible for its accounts, to the other," and that all negotiations for Truman Boyd Manor had been carried on in the name of Memorial National Home Foundation. Yet in the same letter she was relying on the 1947 and 1952 resolutions (both misleadingly paraphrased by Mrs. Boyd) of American Gold Star Mothers, Inc., citing the interlocking directorate, and stating the *only* relationship between them "lies in the fact that American Gold Star Mothers, Inc., is the only organization with a nationwide membership of exclusively Gold Star Mothers," and for that reason, the National President of American Gold Star Mothers, Inc., is on the Board of Directors of

---

rate and distinct corporate entities. Neither corporation is responsible for its accounts to the other.

"The only relationship between the two corporations lies in the fact that the American Gold Star Mothers, Inc. is the only organization with a nationwide membership of exclusively Gold Star Mothers. For that reason the National President of the American Gold Star Mothers, Inc. is given a place on the Board of Directors of the Memorial National Home Foundation during her term of office. Further, each chapter of the American Gold Star Mothers, Inc. is allowed the privilege of electing a member to serve on the advisory committee of the Memorial National Home Foundation.

"It was at the National Convention of the American Gold Star Mothers, Inc. in 1947 that the convention delegates approved the establishment of a Memorial National Home Foundation for Gold Star Parents, as we have always recognized that a husband and wife should not be separated. *At the National Convention of American Gold Star Mothers, Inc. in 1952 the delegates voted their approval of the management and policies of the Memorial National Home Foundation for Gold Star Parents.*

"The permanent directors of the Memorial National Home Foundation for Gold Star Parents have voted the authority to Mr. McIntyre Faries as Secretary and myself as President to fully transact all business connected with the transfer of Project Cal. 4807 to the Memorial National Home Foundation for Gold Star Parents.

"It is necessary to again bring to your attention the fact that the Memorial National Home Foundation for Gold Star Parents must

Memorial National Home Foundation and each chapter of American Gold Star Mothers, Inc., is allowed the privilege of electing an advisory committee member.

On April 18, 1953, Mrs. Boyd sent to Mr. Filley a copy of the true 1952 American Gold Star Mothers, Inc., convention resolution. [Rep. Tr. Vol. XIII, p. 3804, line 19, to p. 3806, line 13; Cross-Compl. Ex. IIII.] In a memorandum of April 22, 1953, Felt reported to Herman that he had been shown the minutes of the 1948 Convention and quoted the 1948 resolutions, and further reported that the 1952 resolution had been read to him. Mr. Felt's conclusions were that: "Inasmuch as this resolution [1952] seems clearly to demonstrate that the American Gold Star Mothers, Inc. has placed its approval

---

serve, as far as its resources permit, all Gold Star Parents, irrespective of race, color, creed or membership in any organization, such as the American Gold Star Mothers, Inc.

"In my negotiations with Senator Sparkman and other members of the Senate and House, as well as with Mr. Foley, Mr. Egan, and Mr. Silverman, all business was carried on in the name of the Memorial National Home Foundation for Gold Star Parents.

"If any confusion exists, it is resultant of my holding an office in the American Gold Star Mothers, Inc.; and if you deem it advisable, I shall sever my connections with the American Gold Star Mothers, Inc. As a result of according a place on the Board of Directors of the Memorial National Home Foundation to the National President of the American Gold Star Mothers, Inc. during her term of office, the National Executive Board of the American Gold Star Mothers, Inc. have accepted the President of the Memorial National Home Foundation for Gold Star Parents as a member of their National Executive Board during her term of office.

Sincerely yours,
/s/ Eleanor D. Boyd
Mrs. Walter H. Boyd, President
Memorial National Home Foundation
for Gold Star Parents.
1255 East Second St.,
Long Beach 2, California"

[Rep. Tr. Vol. XIII, p. 3798, line 23, to p. 3801, line 23; Cross-Deft. Ex. 24.]

upon the actions of the Memorial National Home Foundation, I am convinced that all of the dissident opinions expressed in Mr. Filley's numerous conferences do not represent a cross-section of the thinking of the membership of American Gold Star Mothers, Inc." and that the 1952 resolution, including the advisory committee arrangements, "would indicate that the American Gold Star Mothers, Inc. are satisfied with the present arrangement." Mr. Felt further stated "Had we been presented with the resolution adopted by the 1952 convention, much of the time spent on considering this matter would have been saved." [Rep. Tr. Vol. XIII, p. 3784, line 5, to p. 3787, line 9.]

Appellants treat the opposition to the transfer manifested by certain members as follows: "Despite the efforts of American Gold Star Mothers, Inc. to prevent the transfer . . ." (App. Op. Br. p. 23); "Respondent American Gold Star Mothers, Inc. tried to prevent this contribution to Memorial National Home Foundation . . ." (App. Op. Br. p. 3); "Most important, however, is the concerted effort of the officers and members of American Gold Star Mothers, Inc. to prevent the relinquishment of Truman Boyd Manor to Memorial National Home Foundation and their professed reason for such efforts, to wit: that American Gold Star Mothers, Inc., did not want the property" (App. Op. Br. p. 54); Mrs. Boyd "overcame . . . the concerted opposition of American Gold Star Mothers, Inc. [Ex. 21], and caused the relinquishment of Truman Boyd Manor" (App. Op. Br. p. 57); "A telegram from Grace McClellan, an officer of American Gold Star Mothers, Inc., to Mrs. Elsie Nielsen indicates the extent to which American Gold Star Mothers, Inc., attempted to prevent the transfer of Truman Boyd Manor." (App. Op. Br. "Factual Appendix" p. 43.)

The evidence does not show any official action of American Gold Star Mothers, Inc., concerted or otherwise, to prevent the transfer of Truman Boyd Manor. It does show that some of the national and local officers living in the Los Angeles area had acquired knowledge (communicated to Mrs. Nielsen) which gave them cause to fear that Mrs. Boyd had repudiated or would repudiate the trust. It is clear that their information was limited as to Truman Boyd Manor, but they had learned enough to anticipate what in fact actually happened upon the transfer being made when Mrs. Boyd repudiated the trust. Moreover, the resolutions which Long Beach Chapter proposed to submit at the 1953 Convention later that year, disclose that what they in fact sought was "that the Memorial National Home Foundation be brought back under the parenthood of American Gold Star Mothers, Incorporated." [Rep. Tr. Vol. XIII, p. 3758, line 25, to p. 3759, line 1.]

The documents given Herman caused him to feel that whereas he had, up to March 27, 1953, considered Memorial National Home Foundation an arm or agent of American Gold Star Mothers, Inc., he had been given information "that it might not be." It is important to note, however, that despite persistent questioning by appellants' counsel, he refused to say that he had changed his opinion. [Rep. Tr. Vol. XIII, p. 3807, line 12, to p. 3809, line 22.]

What is most important, however, is that Herman's final decision was that he should not try to decide this issue. He had never seen the original application of Memorial National Home Foundation [Rep. Tr. Vol. XIII, p. 3773, lines 8-13], and he was unaware that the Public Housing Administration had exacted as a require-

ment to its approval of the transfer a showing of approval by American Gold Star Mothers, Inc.; indeed, he doubted that they had sought it since he felt the thinking of the Public Housing Administration "was corresponding to . . . our own." [Rep. Tr. Vol. XIII, p. 3816, lines 12-26.] He did not fully agree with Felt's memorandum of April 22 [Rep. Tr. Vol. XIII, p. 3812, line 3, to p. 3814, line 8], but his own conclusion was that "the more we lived with this case the more we felt that there was an issue to which the Federal Government was not properly a party." [Rep. Tr. Vol. XIII, p. 3814, lines 14-17.] "[W]e investigated that problem and came to the conclusion as to what our interest in it was, which was none, frankly; and then we proceeded to make a summary of what we had found and we sent that to our central office." [Rep. Tr. Vol. XIII, p. 3817, lines 16-20.]

He made a determination that the transfer met the specific requirements of the Act and the defense interest [Rep. Tr. Vol. XIII, p. 3811, lines 3-16]; thereafter, "On May 20th the Administrator approved an exception to the disposition suspension order to permit transfer of Project Cal 4807" after clearance with the Navy in May and the regional representative, Mr. Herman, on March 27, 1953 [Rep. Tr. Vol. XIII, p. 3774, line 24, to p. 3775, line 19] and the Public Housing Administration was authorized to proceed with disposition. [Rep. Tr. Vol. XIII, p. 3774, line 24, to p. 3775, line 19.][10]

---

[10]It is noteworthy that the approval of the suspension of disposition was made on the basis of Herman's March 27, 1953, recommendation. Herman testified "One recommendation was made by me on March 27, 1953, to Mr. Young proposing the relinquishment. At that time I assumed that the Foundation was directly related to and in effect an agent of the American Gold Star Mothers, Incorporated." [Rep. Tr. Vol. XIII, p. 3808, lines 7-11.]

With the testimony by Herman in this record thus set forth, these facts are readily apparent: (1) When Herman entered the scene, the transfer had been approved in Washington for three years, on the basis of the 1950 application; (2) The policy determinations on the sufficiency of the application to meet the spirit and intent of the Lanham Act had been made by the Public Housing Administration in Washington; (3) The concern of Herman's office in 1953 was essentially to determine whether from the standpoint of military need the freeze order could be lifted as to Truman Boyd Manor; (4) Until shortly before the transfer Herman thought Memorial National Home Foundation was directly connected to American Gold Star Mothers, Inc., as an arm or agent and recommended the transfer in that belief; (5) At that point a mass of confusing facts was presented to him, including Mrs. Boyd's misleading explanations of the resolutions of American Gold Star Mothers, Inc., nevertheless showing approval of the transfer by it; (6) He concluded that he would not attempt to decide the controversy, that his office had no interest in it but, since Memorial National Home Foundation met the technical letter of the Act, would recommend the lifting of the freeze order; (7) The freeze order was lifted on the basis of his original recommendation.

It is thus apparent that the real approval of the application was made by the Public Housing Officials in Washington in 1950. These were the men to whom the responsibility had been delegated of determining the intent of Congress and deciding whether the application of Memorial National Home Foundation should be granted within the spirit of the Act. They decided that this amendment was intended for American Gold Star Mothers,

Inc., satisfied themselves that Memorial National Home Foundation was an arm of American Gold Star Mothers, Inc., set up to hold title to the property, and required proof from appellants of that fact, and on that basis approved the application. The evidence abundantly supports the findings of the trial court that the Public Housing Administration believed Truman Boyd Manor was being conveyed to an organization which was an integral part of and controlled by American Gold Star Mothers, Inc., and that Truman Boyd Manor and its income is subject to a trust for needy and distressed members of American Gold Star Mothers, Inc., who are parents of World War II veterans.

LE COPY

Court, U.S.
FILED.
JAN 9 1959
JAMES R. BROWNING, Clerk

PETITION NOT PRINTED

IN THE

Supreme Court of the United States

October Term, 1958.

No. 575

MEMORIAL NATIONAL HOME FOUNDATION, a non-profit charitable corporation,

Petitioner,

vs.

EDMUND G. BROWN, Attorney General of the State of California, and AMERICAN GOLD STAR MOTHERS, INC., a non-profit charitable corporation,

Respondents.

STIPULATION AS TO SUBSTITUTION OF PARTY RESPONDENT.

DUDLEY K. WRIGHT,
111 West Seventh Street,
Los Angeles 14, California,
Counsel for Appellant Memorial National Home Foundation.

GEORGE E. WISE,
110 West Ocean Boulevard,
Long Beach 2, California,
Counsel for Respondent American Gold Star Mothers, Inc.

Counsel for Respondent Stanley Mosk, Attorney General of the State of California.

STANLEY MOSK,
Attorney General,
By GEORGE M. GOFFIN,
Deputy Attorney General.
600 State Building,
Los Angeles 12, California,

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

IN THE

Supreme Court of the United States

October Term, 1958.

No. 575

MEMORIAL NATIONAL HOME FOUNDATION, a non-profit charitable corporation,

Petitioner,

vs.

EDMUND G. BROWN, Attorney General of the State of California, and AMERICAN GOLD STAR MOTHERS, INC., a non-profit charitable corporation,

Respondents.

STIPULATION AS TO SUBSTITUTION OF PARTY RESPONDENT.

The parties to the above entitled cause hereby stipulate that Stanley Mosk may be substituted for Edmund G. Brown as respondent Attorney General of the State of California.

DUDLEY K. WRIGHT,
Counsel for Appellant Memorial National Home Foundation.

GEORGE E. WISE,
Counsel for Respondent American Gold Star Mothers, Inc.

Counsel for Respondent Stanley Mosk, Attorney General of the State of California.

STANLEY MOSK,
Attorney General,

By GEORGE M. GOFFIN,
Deputy Attorney General.